99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-495

FEDERAL FIREARMS LAW REFORM ACT OF 1986

MARCH 14, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HUGHES, from the Committee on the Judiciary, submitted the following

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REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4332]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary to whom was referred the bill (H.R. 4332) to amend chapter 44 (relating to firearms) of title 18, United States Code, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is set forth in the appendix at the end of the report.

PURPOSE OF THE LEGISLATION

H.R. 4332 is designed to relieve the nation's sportsmen and firearms owners and dealers from unnecessary burdens under the Gun Control Act of 1968, to strengthen the Gun Control Act of 1968 to enhance the ability of law enforcement to fight violent crime and narcotics trafficking, and to improve administration of the Act.

OVERVIEW OF THE LEGISLATION

BENEFITS FOR SPORTSMEN

Permits interstate sale of rifles and shotguns if the sale is made face to face between buyer and seller and complies with laws of both states.

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Assures the rights of individuals to travel in and between states with a secured, unloaded, not readily accessible rifle or shotgun for the purpose of participating in legal sporting activities or for changing their residence.

Eliminates recordkeeping in the sale of ammunition in quantities of less than 1,000 rounds except for armor-piercing ammunition.

Limits the forfeiture of firearms to only those involved in or intended to be involved in felony violations of the law.

Improves the ability of deserving members of the public to petition the Secretary to obtain relief from the disabilities of the Gun Control Act.

BENEFITS FOR LAW ENFORCEMENT

Provides an important new weapon against narcotics traffickers by mandating that a person who uses or carries a firearm during and in relation to a drug trafficking crime shall be subject to a mandatory prison term of five years.

Provides a mandatory prison term of ten years for using or carrying a machine gun during and in relation to a crime of violence or a drug trafficking offense, and a mandatory twenty years for any subsequent offense.

Bans the future sale of silencers and silencer kits.

Provides for notification of law enforcement authorities of a handgun purchase to permit a check of records of criminal conviction or other disqualification of the purchaser. There is no waiting period.

Controls all parts designed or intended to be used for converting weapons into machine guns.

Makes it a crime for any non-licensee to transfer a firearm to another person knowing that such person is unqualified.

Modernizes the prohibition on receiving firearms by a person who is an addict to a controlled substance.

Enacts the current regulation requiring reporting multiple handgun sales.

Clarifies the law by combining in one section all of the offenses related *to* sale of firearms to unqualified persons, and the offenses of receipt, possession and transport of firearms by unqualified persons.

Permits the Secretary of the Treasury to consider any state law disqualifications when issuing licenses.

Bans the importation of key components of "Saturday night specials."

Provides an additional weapon against narcotics traffickers by mandating that a person who uses or carries a firearm loaded with armor-piercing ammunition during and in relation to a drug trafficking crime shall be subject to a mandatory prison term of five years.

BENEFITS FOR GUN DEALERS

Requires proof of a knowing state of mind for felony violations.

Reduces recordkeeking offenses to a misdemeanor.

Permits sales at a gun show by a licensee.

Limits information required on license applications to information necessary to determine eligibility for licensing.

Limits compliance inspections to 3 per 18 month period unless personally approved by the Secretary or Director of BATF.

Gives the Secretary a sanction of license suspension to punish less serious violations of the Gun Control Act.

HISTORY OF THE LEGISLATION

There has been substantial concern since 1968 that the Gun Control Act had serious omissions that limited its ability to keep firearms out of the hands of criminals. Others have voiced concerns about the impact of enforcement of the act upon sportsmen. In each Congress since 1968 legislation has been introduced both to substantially strengthen the Act or to repeal or lessen its requirements.

In the 94th Congress the Subcommittee on Crime held hearings on close to 100 bills pending in the subcommittee that ranged from repeal of the 1968 Gun Control Act to prohibiting most private ownership of handguns, in eight cities around the nation taking testimony on 24 days totalling some 100 hours from 220 witnesses.[1] (Mr. Hughes, Chairman of the Subcommittee on Crime, was a member of the Subcommittee in the 94th Congress.) The Judiciary Committee favorably reported the bill, H.R. 11193, but no action was taken on it in the House of Representatives.

During the 1970s it was asserted by firearms owners and dealers that a number of the requirements of the act are onerous and do not serve legitimate law enforcement purposes. It has also been asserted that enforcement of the Gun Control Act had been overzealous.

In the 96th Congress hearings were held to explore those issues.[2] Representative Harold Volkmer introduced H.R. 5225 to address those concerns (which was the precursor of H.R. 945 and S. 49 discussed below).

Representative Peter W. Rodino, Jr., Chairman of the Committee on the Judiciary Committee, introduced the Handgun Crime Control Act of 1979, H.R. 5823, on November 7, 1979. The bill would have banned the manufacture, importation, assembly or sale of "Saturday night specials", required a 21 day waiting period before the purchase of handguns for FBI and local police record checks for disqualifications, prohibited the purchase of more than 2 handguns per year without approval by the U.S. Attorney General, prohibited sales of handguns by pawnshops, required reporting of the loss or theft of a handgun, raised license fees for handgun dealers to $500 per year and for handgun manufacturers to $5000 per year, and transferred firearms law enforcement from the Treasury Department to the Justice Department.

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[1] Hearings before the Subcommittee on Crime of the House Committee on the Judiciary on Firearms Legislation. (94th Cong. 2d sess., Feb. 18, 20, 27, March 5, 6, 13, 26, April 9, 14, 15, May 14, June 9, 10, 16, 23, July 17, 21, 23, 24, 25, September 24, October 1 and 9, 1985) Serial No. 11.

[2] Hearings before the Subcommittee on the Constitution of the Senate Judiciary Committee on Gun Control and Constitutional Rights, 96th Cong. 2d sess. and Hearings of the Senate Committee on Appropriations on Oversight of the Bureau of Alcohol, Tobacco and Firearms, 96th Cong. 2d sess.

In the 97th Congress, Rep. Harold Volkmer reintroduced the legislation as H.R. 3300, and Senator James McClure introduced S. 1030, a companion bill. S. 1030 was the subject of three days of hearings lasting a total of 6½ hours.[3] After four days of mark up it was reported on April 21, 1982 (S. Rep. 476 (97th Cong. 2d sess.) but was not brought to the Senate for consideration. Chairman Peter W. Rodino, Jr. reintroduced his legislation as H.R. 3200.

In the 98th Congress, Rep. Volkmer reintroduced his legislation as H.R. 2420. Senator McClure reintroduced his as S. 914. The Senate Judiciary Committee held a day of hearings on October 4, 1983. That Committee met on four occasions between November 17, 1983 and May 10, 1984 to mark up S. 914. It was finally reported on May 10, 1984 (S. Rep. 98-583). The bill was never brought to the Senate floor. Chairman Rodino reintroduced his legislation to control handguns as H.R. 1543.

At the beginning of the 99th Congress, Rep. Volkmer reintroduced his legislation with a number of amendments, as H.R. 945. Senator McClure reintroduced his legislation, S. 49, with a number of amendments to the Committee-reported bill, and omitting a major provision of the Committee-reported bill, a prohibition on interstate sale of concealable handguns. S. 49 was placed on the Senate Calendar and was not referred to Committee. No hearings were held nor was a report issued by the Senate Judiciary Committee. The bill was debated, amended and passed by the Senate on July 9, 1985. Chairman Rodino reintroduced his legislation to control handguns as H.R. 1442.

On August 1, 1985 Chairman Peter W. Rodino, Jr. introduced a new bill, H.R. 3155, the Racketeer Weapons and Violent Crimes Control Act of 1985.

H.R. 3155 provided a 15 day waiting period to allow a record check of prospective handgun purchasers to determine if there is a criminal conviction, adjudication of mental incompetence or other disqualifying circumstance.

Second, it prohibited the transfer and possession of machine guns, used by racketeers and drug traffickers for intimidation, murder and protection of drugs and the proceeds of crime. The bill allowed possessers of lawfully registered machine guns to continue their legal possession. The bill enabled a person to dispose of an unwanted legally registered machine gun by permitting the Secretary to buy a machine gun from such person.

Third, it prohibited the transfer and possession of silencers, used in assassinations and contract murders, in the same manner as the section on machine guns.

Fourth, the bill allowed the Secretary to consider whether applicable State law would bar a prospective licensee from any conduct required to carry out the business of the Federal licensee.

Fifth, the bill closed a number of loopholes concerning possession of firearms by illegal users of drugs.

Sixth, the bill provided regulatory reforms that the NRA and the nation's gun owners, sportsmen, and licensed firearms dealers have

[3] Hearings before the Senate Committee on the Judiciary on S. 1030, a bill to protect firearms owners' constitutional rights, civil liberties and right of privacy (97 Cong. 1st and 2d sess., December 9 and 11, 1981, and February 8, 1982, Serial No. J-97-87.)

long desired which will not compromise BATF's law enforcement capabilities.

(a) The bill allowed licensed dealers to sell firearms at gunshows.

(b) It eliminated record keeping requirements for the sale of ammunition, except for large quantities, and eliminates record keeping requirements for transfers of curios between licensed collectors.

(c) It provided the Secretary an alternative penalty in a case of violation of the regulations of the GCA of license suspension, an alternative to the only penalty currently available, license revocation.

(d) The bill expanded the class of persons eligible for relief from the disabilities imposed under the Act. It benefits persons who had been convicted of a crime or who had once been adjudicated mentally incompetent, have been subsequently determined to have reformed or adjudicated as restored to mental competence.

The bill raised the annual license fees of licensed dealers, pawnbrokers, manufacturers and importers from $10, $25, $50 and $50 per year, respectively, to $200 per year. A fund from the license fees received under the GCA would be created to be used for "grants . . . to State and local governmental agencies for the purposes of providing assistance in enforcing this chapter or the operation of firearm safety program operated under State or local law."

SUBCOMMITTEE HEARINGS

In September, 1985, the Subcommittee on Crime announced hearings on all the firearms legislation pending before the Subcommittee. Hearings were held in New York City (October 28, 1985), San Francisco (November 9, 1985) and Washington, D.C. (October 30, 1985, February 19, 1986 and February 27, 1986). Testimony was taken from some 75 witnesses from 13 states. The hearings lasted a total of some 25 hours. Numerous letters and submissions were also received.

Among the witnesses from whom the Subcommittee received testimony or prepared statements were the following:

Members of Congress: Rep. Bill Green, Fifteenth Congressional District, New York; Rep. Tommy F. Robinson, Second Congressional District, Arkansas; Rep. G. William Whitehurst, Second Congressional District, Virginia; Rep. Marty Russo, Third Congressional District, Illinois; Rep. Harold Volkmer, Ninth Congressional District, Missouri; Rep. Robert G. Torricelli, Ninth Congressional District, New Jersey; Rep. James A. Traficant, Jr., Seventeenth Congressional District, Ohio, and Senator James A. McClure, Idaho.

Public Officials: Thomas H. Cooke, Jr., Mayor, East Orange, New Jersey, Chairman, Advisory Board of the U.S. Conference of Mayors and President, National Institute of Policing; Ken Eikenberry, Attorney General of the State of Washington, Olympia, Washington; Arlo Smith, District Attorney for the City and County of San Francisco; Richard Iglehart, Chief Assistant District Attorney, Alameda County, Oakland, California.

Police Officials, Officers and Representatives of Law Enforcement Organizations: Benjamin Ward, Police Commissioner, City of New York; Colonel Clinton Pagano, Superintendent, New Jersey State Police; Cornelius Behan, Chief of Police, Baltimore County, Maryland Police Department, President, Police Executive Research Forum; Richard Boyd, National President, Fraternal Order of Police; Sergeant Lou Parisi, President, New Jersey Sergeants Association; John J. Norton, Director of Public Safety, Pittsburgh, Pennsylvania, and President, International Association of Chiefs of Police, on behalf of the IACP; Joseph D. McNamara, Chief of Police, San Jose, California; Sergeant Armand Tiano, Immediate Past President, Santa Clara County Deputy Sheriffs Association and Recording Secretary, National Association of Police Organizations, on behalf of NAPO: Lyman Shaffer, former Special-Agent-in-Charge, Firearms Enforcement Branch, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, San Francisco, California; Detective Senior Trooper David M. Codding, District Officer, Oregon State Police Association, Eugene, Oregon; John D. Ambrose, Legislative Chairman, California Association of Highway Patrolmen, Fairfield, California; Michael R. Mantell, Ph. D., Chief Psychologist, San Diego Police Department, and Assistant Clinical Professor, Department of Psychology, U.C.S.D. Medical School; President, National Police Psychology Association (a section of the American Psychological Association), San Diego, California; Hubert Williams, President, The Police Foundation, Washington, D.C.; Marty M. Tapscott, President, National Organization of Black Law Enforcement Executives and Assistant Chief of Police, Metropolitan Police Department, Washington, D.C.; Susan Keegan, Legislative Director, National Sheriffs' Association, Alexandria, Virginia, accompanied by Sheriff John Duffy, San Diego County, California, Chairman, Law and Legislation Committee, National Sheriffs' Association; Edward L. Murphy, Legislative Counsel, International Brotherhood of Police Officers, AFL–CIO, Washington, D.C.; Robert E. Van Etten, President, Federal Law Enforcement Officers Association (FLEOA) accompanied by Tom W. Doyle, executive Vice President, FLEOA; Sterling Epps, Co-Chairman, Legislative Committee, FLEOA; and Kathleen P. Solerwitz, General Counsel, FLEOA

Survivors and Victims of Firearms Violence: Sarah Brady, Arlington, Virginia; Larry Lowenstein, New York, New York; Ronald Bielicki, Watertown, Massachusetts; Anthony Palomares, Thousand Oaks, California; and Nelson "Pete" Shields, Chairman, Handgun Control Inc., Washington, D.C.

Religious Organizations: Rabbi Gary Bretton-Granatoor, Union of American Hebrew Congregations; Reverend Kathy Young, Director, Presbyterian Criminal Justice Program, Presbyterian Church (U.S.A.); Reverend Jack E. Stouffer, Assistant to the Bishop of the Metropolitan New York Synod, Lutheran Church in America; Sam Rabinove, Legal Director, American Jewish Committee; Harold Massey, Program Coordinator, General Board of Church and Society, United Methodist Church; The Honorable Leland Lazarus, Judge, Superior Court of the State of California for the City and County of San Francisco (Retired), and Judge, First District Court

of Appeals for Northern California (by designation) on behalf of the American Jewish Congress, San Francisco, California

Medical and Professional Associations: Joseph Greensher, M.D., Chairman, Committee on Accident and Poison Prevention, American Academy of Pediatrics, Mineola, New York; Richard L. Stennes, M.D., F.A.C.E.P., President, American College of Emergency Physicians; Garen Wintemute, M.D., M.P.H., Assistant Professor, Department of Family Practice, University of California—Davis Medical Center, Sacramento, California; and the Honorable Sylvia Bacon, Judge, Superior Court of the District of Columbia, on behalf of the American Bar Association

Firearms Owners Organizations: Neal Knox, Firearms Hard Corps, Silver Spring, Maryland; Lawrence D. Pratt, Executive Director, Gun Owners of America, Falls Church, Virginia; John Snyder, Citizens Committee for the Right to Keep and Bear Arms, Washington, D.C.; J. Warren Cassidy, Executive Director, Institute for Legislative Action, National Rifle Association of America, Washington, D.C. accompanied by Richard Gardiner; Counsel

Hunters and Sportsmens Organizations: Jerry Preiser, President, Federation of New York State Rifle and Pistol Clubs, Great Neck, New York; David I. Caplan, Voluntary Counsel, Federation of New York State Rifle and Pistol Clubs, New York, New York; Barbara Ruhe, Board of Directors, Connecticut Sportsmens Alliance, Hartford, Connecticut; Cecil Cohen, Legislative Director, New York State Rifle and Pistol Association, Margaretville, New York; Fielding Greaves, Lt. Col. (Ret., U.S. Army), Sportsmens Committee on Political Education, San Rafael, California; W. Hunt Conrad, Publisher, Royal Coachman, San Francisco, California; Robert E. Hunter, Jr., Secretary, Responsible Gun Owners, San Francisco, California; and Mr. Robert F. MacKinnon, Middlesex, New Jersey, on behalf of the Coalition of New Jersey Sportsmen

Other public witnesses: Suzanne Taylor Moore, Vancouver, Washington; Don Kates, Attorney at Law, San Francisco, California; Dolf L. Goldsmith, San Antonio, Texas; Mr David J. Steinberg, Acting Chairman, National Council for a Responsible Firearms Policy, Inc., Alexandria, Virginia; Mr. Roy Innis, National Chairman, The Congress of Racial Equality, New York, New York

Administration: Edward T. Stevenson, Deputy Assistant Secretary, Enforcement and Operations, U.S. Treasury Department; Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Treasury Department, accompanied by Jack Patterson, Deputy General Counsel, BATF

The Subcommittee, in the course of its hearings, uncovered numerous problems with the approaches that S. 49 and H.R. 945 took to solving the problems that they were attempting to address. (See discussion below.) At every hearing law enforcement officers and representatives of law enforcement organizations discussed problems they would face if either S. 49 or H.R. 945 were enacted, and the need for more effective protection of law enforcement officers from the proliferation of machine guns and high-powered "assault-type" weapons that are increasingly being used by criminals.

PROBLEM AREAS IN H.R. 945 AND S. 49

The Subcommittee on Crime uncovered the following problem areas with H.R. 945 and S. 49.

Preemption of state law—transportation of a firearm

S. 49: This provision had the potential to undermine state law enforcement authority significantly. This provision entitles persons who are not disqualified from receiving weapons under the Gun Control Act of 1968 (GCA) to—

> transport an unloaded, not readily accessible firearm in interstate commerce" notwithstanding any provision of state or local law. (S. 49, sec. 107, page 31, lines 12–18)

Inerstate commerce is an extremely broad term. One does not have to cross a state line to be "in interstate commerce." It could create a Federal defense to state and local prosecutions for unlawfully carrying a firearm. It is unclear how long a person remains in interstate commerce after entering interstate commerce. The provision could even exempt the residents of a State from that State's law when it is shown, as is easily the case, that the person was "in interstate commerce."

H.R., 945: The approach in H.R. 945 is even broader than in S. 49.

> Any provision of any legislation enacted, or any rule or regulation promulgated, by any State or political subdivision which prohibits or *has the effect of prohibiting* the transportation of a firearm or ammunition in interstate commerce through such State or political subdivision, when such firearm is unloaded and not readily accessible, shall be null and void. (H.R. 945, sec. 107, page 20, lines 9–18, emphasis added.)

Among other effects, this provison could have the effect of invalidating State laws prohibiting felons or mental incompetents from possessing firearms.

Immunity from prosecution

S. 49 and H.R. 945 provide that if any crime is uncovered in the course of a regular inspection of a Federal firearms licensee, "no criminal charges shall be brought against the licensee except for willful violation of the recordkeeping requirements" or for sales or dispositions of firearms in violation of 18 U.S.C. 922(d). This provision creates immunity for prosecution for all crimes uncovered in such an inspection. (S. 49, sec. 103(6), page 15, lines 9–13; H.R. 945, sec. 103(7), page 14, lines 18–21)

Interstate sale of firearms

Permits over-the-counter sales of firearms (including handguns) to out-of-state residents (S. 49, sec. 102(3) and (4), pages 6–7, lines 23–23; H.R. 945, sec. 102(4), pages 7–8, lines 22–14). Licensees would be required to fully comply with the state and local laws applicable to the place of sale and the place of residence of the purchaser. However violations of this requirement would only be punishable if

they were "willful." (S.49, sec. 104(1), page 22, line 14; H.R. 945, sec. 104(1), page 16, line 11). Willful violations would be more difficult to prove than the usual "knowing" standard, particularly in reference to the laws of various states. Sales which do not fully comply with applicable state and local law would violate Federal law but if the failure was due to a mistake of law or fact or due to negligence on the part of the licensee, the violation of the law most likely would not be punishable. Many witnesses wondered how licensees will be able to familiarize themselves with the often complex laws of other states and jurisdictions. A State could not have any ability to prosecute dealers whose sales are made out of State and which violate that State's law—the burden of such enforcement would be solely upon the Federal government.

Many counties have their own laws regarding the purchase of firearms. Since most common forms of identification do not indicate the county in which a person lives, it may be impossible for firearms dealers to know if a county ordinance applies to the sale.[4]

To guide Federal licensees, BATF now publishes an annual compilation of State and local firearms laws.[5] On December 18, 1985 the Treasury Department transmitted proposed legislation to "eliminate the requirement for the annual publication of ordinances concerning firearms laws." (Executive Communication 2419). The explanation of this proposed measure by the General Counsel of the Department of the Treasury is that an annual publication "is considered of little value to the licensee because local ordinances change frequently between publications." This illustrates some of the limitations of a provision that interstate sales may be made if they are in compliance with the law of place of residence of an out of state purchaser.

Weakening current mandatory penalty for using or carrying a firearm in the commission of a crime of violence (S. 49 only)

The current mandatory prison term for the use or carrying of a firearm, during and in relation to any federal crime of violence, is five years without probation or parole (18 U.S.C. 924(c), P.L. 98-473, (section 1005(a)), October 12, 1984.

18 U.S.C. 924(c) is only triggered if the use or carrying of the firearm is "during and in relation" to an underlying crime of violence. To successfully prosecute, proof of the defendant's commission of the crime of violence is necessary.

S. 49 *adds* an unnecssary element to the offense that the carrying be "*in furtherance of any such crime of violence.*" (S. 49, sec. 104(2), page 23, line 14). Proof of this element would involve additional analysis of the defendant's conduct, the circumstances of the violent crime and evidence of the defendant's state of mind. It would be a substantial burden on the prosecution and is unnecessary to prevent injustice.

S. 49 also contains a proviso that evidently intends to create a defense of "self-defense," (S. 49, sec. 104(2), page 24, lines 10-21). Essentially this defense would apply to the criminal who armed

[4] See "State Laws and Published Ordinances—Firearms," U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 16th Edition, December 1984.

[5] *Ibid.*

himself in anticipation of "perceived immediate danger" from another criminal similarly armed, or that he might be arrested by a police officer "unlawfully".

The defense does not follow the Federal rule of self-defense which follows the Common Law—that the belief of the defender must be *reasonable* under the circumstances as they appear at the moment.[6] It appears that this formulation may create, for the first time in Federal law, a statutory right to use force to resist an unlawful arrest. The defense fails to address the most common problems in the law of self-defense such as cases of mutual combat, cases in which the defender initiated the assault but then gave up the attack and retreated, and cases in which the reasonable belief of the defender was in error.

Proponents of the self-defense amendment point out that the defense is not available to one protecting himself "from the danger which was the direct result of the commission of or attempt to commit a felony." They argue that a felon who *uses* a a gun in the commission of a felony or in a shoot out with police while fleeing cannot therefore claim self-defense, since he is protecting himself from a danger that was the direct result of the felony.

While this reasoning may rule out a successful self-defense claim in most situations in which the *use* branch of the offense forms the basis of the mandatory penalty prosecution, it would not have the same weight in the case of prosecution for *carrying* a firearm during the commission of a felony. Indeed, the "carrying" branch of the offense might be decimated, in that the felon could claim that he was only carrying the weapon for defense against other felons, and cite the fact that he did not actually *use* the weapon as proof of his claim. For example, a drug trafficker, if charged with carrying a firearm under 18 U.S.C. 924(c) in connection with drug trafficking, might be able to reasonably sustain a claim that it was carried for protection against rival traffickers.

Although the provision, section 924(c) of title 18, U.S.C., is frequently referred to as a penalty enhancement provision it is in reality a separate offense from crimes of violence such as assault with a dangerous weapon.[7] It is inconsistent to provide a statutory defense for 924(c) and not for other crimes. This defense could result in prosecutors avoiding the use of 924(c). Eliminating the need to elect between 924(c) in 1984.

Making Prosecutions of GCA Violations More Difficult

Requires proof of "willfulness" to convict for many GCA violations (S. 49, sec. 104(1); H.R. 945, sec. 104(1)). Case law interpreting the criminal provisions of the GCA have required that the government prove that the defendant's conduct was knowing, but not that the defendant knew that his conduct was in violation of the law.[8]

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[6] S. 1030 and H.R. 3300 (97th Congress) both correctly defined the defense in terms of a "reasonably" perceived immediate danger. H.R. 2420 (98th Congress) eliminated any reference to self-defense in this section, evidently relying upon the Common Law rule. H.R. 945 does not amend 18 U.S.C. 924(c) and thus it appears that Rep. Volkmer is satisfied with the Common Law rule.

[7] *Simpson* v. *United States*, 435 U.S. 6, 10 (1978).

[8] *United States* v. *Freed*, 401 U.S. 601, 607-610 (1971).

The criminal law traditionally does not require proof that the defendant knew that his conduct was in violation of the law.[9]

It appears that the intent of the authors of the "willfulness" requirement of S. 49/H.R. 945 is that the prosecution have to prove that the defendant knew the details of the law, understood that his conduct would violate the law, and intentionally set out to violate the law. This would constitute an almost impossible, and almost unprecedented burden on the prosecution. Proponents of the willfulness standard argue that the offenses for which the standard would apply are mere regulatory offenses, for which a conscious and specific intent to violate the law should be required. However, a person violating a city's vehicular speed limit cannot successfully assert that he had not read the city ordinance nor seen a posted speed limit; a toxic waste dumper cannot escape prosecution by claiming he had not kept up on the environmental protection laws; a money launderer cannot continue to engage in the business of servicing drug traffickers and organized crime by defying the government to prove that he knew that federal law requires that large cash transactions at financial institutions must be reported to the Treasury Department. The Committee believes that, similar to these examples, a person who engages in the business of selling hand grenades or machine guns should not escape prosecution solely on the grounds that the government cannot produce witnesses to whom the defendant admitted knowledge that such conduct requires a federal license, and a determination to violate that law.

Determining who needs a license

A feature with major impact is the change in defining who is required to obtain a license as a dealer, manufacturer or importer. This is an area that has many who use firearms very upset. Persons who are "engaged in the business" of manufacturing, importing, or buying and selling firearms are required to obtain a license.

S. 49 and H.R. 945 define "engaged in the business" in terms of "the principal objective of livelihood and profit" whose underlying intent is "*predominantly* one of obtaining livelihood *and* pecuniary gain" (emphasis added) (S. 49, sec. 101(6), pages 3–5) and 102(1); H.R. 945, sec. 101(6)). This definition, which does not follow the case law, is likely to have a serious weakening effect on the GCA. Current law permits ordinary firearms owners to sell their firearms but not to "engage in the business" of selling firearms without a license.

These provisions expand the number of persons who can engage in firearms transactions or importation without needing a license or having to comply with the record keeping requirements of the law. This definition has loopholes for a person, believing the public ought to be armed for self-protection, who sells large volumes of firearms at no markup or a price which does not make a profit, who would not be "engaged in the business."

Unfortunately, this new definition does not solve the ambiguity that confronts an active collector. Certainly one motive of a person

[9] *United States* v. *Currier*, 621 F.2d 7, 9–10 (1st Cir. 1980).

collecting firearms, and frequently the predominant motive shared with other collectors, is to upgrade the value of the collection by making trades or sales that are profitable. A shrewd, lucky or enthusiastic collector may remain confused whether he is "engaged in the business" within the meaning of this new definition.

Courts have not been unanimous regarding the question whether a profit motive is an essential ingredient in determining if one is "engaged in the business" of firearms. However, even among those federal appellate courts which have held that a purpose of making a profit must be shown, none have required that profit making be shown as the *primary* or *predominant* purpose, as S. 49 and H.R. 945 do.[10]

A principal concern of the Committee is that we not permit individuals to buy, sell, and distribute firearms on a repetitive, continuing basis without the necessary records being kept in order to permit tracing if these weapons later wind up being used in crimes. We believe the "principal objective of livelihood and profit" requirement of the proposed definition has this effect. A requirement of proof of objective or motive, unlike a conduct-oriented standard, calls for proof of subjective matters, and is for this reason of questionable wisdom. In a prosecution for engaging in business without a license it is unreasonable to require that the prosecution prove that livelihood *and* profit was the *principal* objective of one who maintains that he buys and sells guns to make a little extra money to add to his personal collection of guns, or because he enjoys learning all about the various firearms that pass through his hands in buying and selling them. While these are legitimate objectives of gun collectors and enthusiasts, the Committee does not believe that one who is, for all intents and purposes, a firearms dealer, should be excused from the licensing and recordkeeping requirements simply by showing that he had other motives beyond just livelihood and profit.

Weakening the Firearms Tracing Program by weakening recordkeeping and restricting Secretary's ability to examine and keep records

In addition to changing the requirements concerning who needs to have a license (and therefore must keep records) and raising the state of mind necessary to prove violations of the requirement to keep accurate records (making such violations harder to prove), these bills weaken the firearms tracing program because they—

(1) Restrict the authority of BATF to inspect the records and inventory of GCA licensees to assure compliance to only one visit per year *and only after advance notification* (S. 49, sec. 103(6), page 15, lines 7-9; H.R. 945, sec. 103(7), page 14, line 12).

(2) Exempt transactions to and from the "personal collection of firearms" of licensees from the recordkeeping requirements for licensees (S. 49, sec. 103(3), pages 12-13, lines 15-4; H.R. 945, sec. 103(4), pages 11-12, lines 18-6). Currently a licensee is required to maintain a record of all his firearms transactions.

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[10] See e.g. *United States* v. *Gross*, 451 F.2d 1355 (7th Cir. 1971), *United States* v. *Swinton*, 521 F.2d 1255 (10th Cir. 1975).

(3) Regarding (i) any records of out-of-business licensees, (ii) any reports from licensees concerning information contained in their records, and (iii) any reports of multiple handgun transfers to a non-licensee, S. 49 prohibits the Secretary from keeping this information in a centralized location or from entering it into a computer for storage or retrieval (Only S. 49, sec. 103(6), page 20, lines 1–5. H.R. 945 has no comparable provision.)

(4) Regarding records of out-of-business licensees, S. 49 requires that the records be sent to the joint custody of the Archivist of the United States and the Secretary to be stored in a record center operated by the Archivist, *limits* access of the Secretary to the records *solely* for the purpose of determining from whom a licensee acquired a firearm and to whom such licensee disposed of such firearm, and requiring the Archivist to destroy these records twenty years after they are received.

For example, BATF could not use these records to investigate whether a firearm purchaser from such an out-of-business licensee had made a false statement in connection with such purchase. (Only S. 49, sec. 103(6), page 17, line 8—page 18, line 13. H.R. 945 has no comparable provision.)

Limitations on seizure of contraband and forfeiture of firearms and ammunition

A potentially significant problem is that the authority to seize and forfiet is limited only to firearms or quantities of ammunition "particularly named and individually identified as involved in or used in" specified violations of law. (S. 49, sec. 104(3), pages 25–28; H.R. 945, sec. 104(2), pages 17–18, lines 24–4). This is narrower than interpretations of the Fourth Amendment requirement that a warrant "particularly" described the place to be searched and the persons or things to be seized, and the exceptions involving objects in "plain view" and "inadvertent discovery." It would appear that contraband firearms could not be seized if they had not been specifically identified in the search warrant as being used in a specific violation of the law.

Sales at gun shows—inspection of inventory prohibited

S. 49 allows all lincensees to conduct business at any temporary location in the State in which they are licensed if the location is the site of a gun show or event sponsored by any national, state or local organization devoted to the collection, competitive use, or other sporting use of firearms, or an organization that sponsors events devoted to the collection, competitive use or other sporting use of firearms, but appears to *bar* examination of the inventory of the licensee at the temporary location (S. 49, sec. 103(7), pages 20–21).

H.R. 945 has no such provision.

Acquittal of criminal charges bars civil actions

These bills provide that an acquittal on criminal charges is a bar to a revocation of a GCA license based in whole or in part on facts which formed the basis of the criminal charge (even though the standard of proof for a revocation is much lower). This would force

the Secretary of the Treasury to elect how to proceed against licensees who violate the law. The government could either undertake a criminal prosecution which it, and a grand jury determined was warranted, but which requires a high burden of proof beyond a reasonable doubt, and thus risk both an acquittal and the inability to proceed civilly to revoke a license, or simply to proceed civilly and permit the criminal violations go unpunished. Forcing this type of election is unwarranted and very rare. It has never been held to offend the Fifth Amendment prohibition against double jeopardy to allow a civil proceeding to follow an unsuccessful criminal prosecution. (S. 49, sec. 103(5)(C), page 13, line 14—page 14, line 2; H.R. 945, sec. 103(6)(B), pages 12–13, lines 17–4).

Liberalizing the importation of firearms

Opens up the importation of firearms by mandating the Secretary to authorize importation of a firearm if there is a sporting purpose and eliminating the requirement that the importer has the burden of satisfying the Secretary of the sporting purpose (S. 49, sec. 105(2), page 29, lines 6–22; H.R. 945, sec. 105(2), pages 18–19, lines 19–4). It is their failure to meet the sporting purpose standard which currently prohibits Saturday Night Specials from being imported into the United States.

Ammunition dealers and recordkeeping

H.R. 3155, would eliminate the need to keep records for sales of ammunition involving less than one thousand rounds. S. 49 and H.R 945 go much further by eliminating any recordkeeping requirement for sales of ammunition by essentially removing the sale of manufacture from the coverage of the law.

If the legislation passed by the House and the Senate to control the sale of armor piercing ammunition (H.R. 3132) is enacted, then the S. 49/H.R. 945 provisions which remove ammunition dealers from the licensing requirements altogether would be likely to hinder effective enforcement of that act. (The provisions relating to ammunition permeate the GCA, S. 49 and H.R. 945).

Additional drafting problems

(1) The provisions in S. 49 to update the disqualification from receiving or possessing a firearm by drug addicts has a problem in that it would fail to apply to persons who are unlawful users or addicts of most hallucinogenic drugs, including the notorious violence-inducing drug phencyclidine (PCP), methaqualine, tranquilizers or designer drugs. (S. 49, sec. 102 (5), (6) and (7), page 8 lines 10–13, page 9 lines 5–8, and page 10 lines 10–13. H.R. 945 does not attempt to modernize the law in this area.)

(2) The provision relating to obtaining and executing a search warrant in the new inspection provisions in 18 U.S.C. 923(g) (S. 49, sec. 103(6), pages 14–15, lines 12–2) differs significantly from those in Rule 41 of the Federal Rules of Criminal Procedure which is likely to create confusion in the enforcement of the GCA.

POSITIVE FEATURES OF S. 49 AND H.R. 945

Strengthening provision—sale to disqualified persons

Both bills strengthen the GCA by extending the prohibition on transferring firearms to disqualified persons from only licensees to private individuals as well. The state of mind is knowing or having reasonable cause to believe that the purchaser is in the disqualified class. (S. 49, sec. 102(5), page 8, lines 3–23; H.R. 945, sec. 102(5), pages 8–9, lines 23–2).

H.R. 4332 includes such a provision.

Mandatory penalty of carrying or using a firearm during and in relation to a drug trafficking crime

S. 49, as a part of its rewrite of the mandatory penalty provisions strengthened in the last Congress (18 U.S.C. 924(c)), would apply the penalty to a person who uses or carries a firearm during and in relation to "any felony described in the Controlled Substances Act, the Controlled Substances Import and Export Act" or the "Marijuana on the High Seas Act" (21 U.S.C. 955a). (S. 49, sec. 104(2), page 23, lines 5–9). H.R. 945 has no such provision.

H.R. 4332 includes such a provision.

Relief from disabilities

S. 49 includes a feature which is law enforcement neutral and which genuinely serves the interests of the nation's sportsmen and hunters by extending to all persons prohibited from possessing, receiving or transporting firearms the ability to seek relief from the disability. (S. 49, sec. 105(1), pages 28–29). H.R. 945 has no such provision.

This addresses the issue raised by the United States District Court for New Jersey which has invalidated the prohibition on the sale of firearms to those who have been committed to mental institutions or adjudicated mentally defective because the GCA does not authorize the Secretary of the Treasury to relieve that disability for former mental patients as it does for ex-convicts.[11] The court held this failure to violate the equal protection and due process protections of the Fifth Amendment. The court stayed the effective date of the order to permit Congress to correct the constitutional infirmities of these provisions. The government has filed a direct appeal in the Supreme Court and the court has further stayed its order pending the appeal. The Supreme Court noted jurisdiction of *Galioto* on November 4, 1985 and requested full scale briefing of this case. Argument of this case is likely this term.[12]

H.R. 4332 includes such a provision.

Barring importation of "Saturday Night Special" barrels

This section of S. 49 would extend the ban on the importation of critical parts of Saturday night specials to include barrels. Frames and receivers of such firearms cannot now be imported. (S. 49, sec. 105(2)(C), page 29, lines 14–20).

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[11] *Galioto* v. *Department of Treasury*, 602 F. Supp. 682 (D.C.N.J., Feb. 7, 1985).

[12] *Galioto* v. *Department of Treasury*, 602 F. Supp. 682 (D.C.N.J., Feb. 7, 1985); —U.S.—, 106 S.Ct. 307, jurisdiction noted, Nov. 4, 1985.

H.R. 4332 includes such a provision.

Clarifying the disabilities under the Gun Control Act

Currently the prohibitions on who may receive, possess and transport firearms are divided among two subsections of the GCA and a subsection of title VII of the Omnibus Crime Control and Safe Streets Act. S. 49 and H.R. 945 would add to the GCA provisions three conditions it does not now cover (which are in title VII): A person who (1) being an alien, is illegally in the United States; (2) has been discharged from the Armed Services under dishonorable conditions; and (3) having been a citizen of the United States, has renounced his or her citizenship.

H.R. 4332 includes such a provision.

Lesser penalties for merely technical violations of the GCA

S. 49 would provide a misdemeanor penalty for licensees who fail to make required entries or who fail to properly maintain their records. (S. 49, sec. 104(1), pages 22–23, lines 19–3. H.R. 945 has no such provision.)

H.R. 4332 includes such provisions.

Views of the Administration

At the Subcommittee's hearing on February 19, 1986, the Deputy Assistant Secretary of the Treasury Edward T. Stevenson conceded that there would be serious problems for law enforcement under these bills. He, with reluctance, turned over to the Subcommittee a seven page "assessment" of S. 49, prepared by the Bureau of Alcohol, Tobacco and Firearms, which contained six positive aspects and eighteen negative aspects which follows:

Assessment by the Bureau of Alcohol, Tobacco and Firearms

Department of the Treasury,
Bureau of Alcohol, Tobacco and Firearms,
Washington, DC, February 10, 1986.

CC–34,270 FE:SRR
Memorandum to: Assistant Secretary (Enforcement and Operations).
From: Director.
Subject: S. 49, the "Firearms Owners Protection Act".

As you requested at the Heads of Bureaus' meeting, I have prepared a memorandum giving our assessment of the strengths and weaknesses of S. 49 (Firearms Owners Protection Act) from an administrative and law enforcement perspective. We provided most of these same comments to the Department when the bill was being considered in the Senate; and, as you can see, some of our concerns were accepted while others were rejected. As the agency responsible for enforcing the Gun Control Act of 1968, a fair hearing of our concerns was probably the most we could expect. We obviously hoped our recommendations would have resulted in more changes than ultimately occurred.

POSITIVE ASPECTS OF S. 49

1. *Ammunition Licensing and Recordkeeping.* The bill would eliminate dealers, pawnbrokers and collectors in ammunition only from the Gun Control Act's licensing provisions. However, importers and manufacturers of ammunition would continue to be licensed. In addition, all recordkeeping provisions concerning ammunition would be repealed. The Bureau and the Department have recognized that current recordkeeping requirements for ammunition have no substantial law enforcement value. In addition, their elimination would remove an unnecessary recordkeeping burden from licensees. Felons and other proscribed persons would still be prohibited from transporting or receiving ammunition in commerce.

2. *Sales to Prohibited Persons.* The bill makes it unlawful for any person, not only licensees, to sell or otherwise dispose of firearms to certain prohibited categories of persons, e.g., a convicted felon. Under existing law it is only unlawful for a licensee to sell or otherwise dispose of firearms knowing or having reasonable cause to believe that such a person is in a prohibited category. This proposal would close an existing loophole whereby qualified purchasers have acquired firearms from licensees on behalf of prohibited persons.

3. *Repeal of Certain Provisions of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968.* The bill would repeal most of Title VII and incorporate its provisions into the Gun Control Act. Thus, all provisions of Federal firearms laws imposing disabilities on felons and other prohibited persons would be combined in the GCA and existing inconsistencies between Title VII and the GCA would be eliminated. The Armed Career Criminal Act, imposing mandatory penalties based upon previous robbery or burglary convictions, would be retained in Title VII. Both ATF and the Department have supported legislation of this nature in the past.

4. *Gun Shows.* The bill would permit licensed importers, manufacturers and dealers to conduct business temporarily at locations other than that specified on their license, within the same State, pursuant to regulations issued by the Secretary. This provision is similar to regulations recently promulgated which allow licensees to conduct business at gun shows if the gun show is located in the same State as that specified on the license. See 27 C.F.R. § 178.000. The bill would remove any doubt concerning the statutory validity of such regulations.

5. *Importation of Certain "Saturday Nite Special" Parts.* Current law prohibits, among other things, the importation of firearms, including firearms frames or receivers, not particularly suitable for or readily adaptable to sporting purposes. Generally, easily concealable and inexpensive handguns are not importable under existing law. The bill would add a new prohibition against the importation of barrels for nonsporting handguns. This change will, to some extent, discourage the existing circumvention of the importation controls which allows the assembly of nonsporting handguns from imported parts.

6. *Mandatory Penalties.* The bill would provide that those who carry or use firearms in the commission of Federal drug offenses will be subject to the Act's mandatory penalties. This amendment

would resolve the current uncertainty whether such crimes are crimes of violence and, thus, fall within the existing mandatory penalty provision. However, there are significant negative aspects of the mandatory penalty provision which are discussed below.

NEGATIVE ASPECTS OF S. 49

1. *Definition of "Engaged in the Business."* The definition is too narrow since it requires a person to engage in a "regular course of business for the purpose of livelihood and profit." Consequently, some criminal activity that may be prosecuted under existing law for engaging in a firearms business without a license may not be prosecutable under S. 49. For example, an individual who on several occasions disposed of firearms at cost to terrorists for the purpose of facilitating their crimes may not be held to be "engaging in the business."

2. *Interstate Sales.* The bill would permit interstate sales of firearms, including handguns, by licensees to nonlicensees if applicable State and local laws are complied with. State and local laws in the State wherein the purchaser resides would be defeated since, as a practical matter, licensees will not have knowledge of such laws. The problem is not cured by the requirement that the Secretary annually provide licensees with a publication containing such laws since the publication would not cover all local ordinances and would never be current. Purchasers' violations would be difficult to prove in view of the requirement to prove willfulness on their part, i.e., the purchaser knew that State or local law was violated. While the bill would create a presumption of knowledge of applicable State and local laws on a licensee's part, no such presumption would exist on the part of the purchaser.

3. *Warrantless Inspections of Licensees' Records and Inventory.* (a) The prohibition against unannounced inspections would enable unscrupulous licensees to conceal violations of the law; (b) limiting compliance inspections to a single, annual inspection would have the same result and would be too infrequent to ensure compliance; and (c) the prohibition against use of evidence uncovered in such inspections in prosecutions for other than willful recordkeeping violations and sales to proscribed categories of persons would preclude prosecutions for serious crimes discovered, e.g., narcotics offenses, illegal possession of machineguns and silencers, illegal interstate firearms sales.

4. *Recordkeeping.* The bill's provision allowing licensees to dispose of firearms without maintaining records of such transactions, if the firearms have been in the licensee's personal collection for at least 1 year, would enable unscrupulous licensees to easily circumvent the recordkeeping requirements. Moreover, it would hamper law enforcement's ability to trace firearms and, hence, solve crimes. The exception for transfers into a personal collection to "evade" the recordkeeping requirements could not, as a practical matter, be proved.

5. *Records in the Custody of the Government.* The bill provides that licensees' reports to the Government and out-of-business records may not be kept by the Secretary at a central location. The requirement to decentralize the storage of such records is totally

unnecessary and, from an administrative standpoint, is costly and burdensome.

6. *License Denial and Revocation.* The bill would not permit license denial or revocation on grounds for which that applicant or licensee was prosecuted in a criminal case and acquitted. Because the burden of proof on the Government is less stringent in civil actions, a civil license denial or revocation proceeding should not depend on the outcome of the criminal case. No constitutional rights are violated by the civil proceeding when the applicant or licensee was previously acquitted of criminal charges.

7. *Forfeiture.* (a) The bill would generally preclude forefeiture of firearms on grounds for which the owner or possessor was prosecuted in a criminal case and acquitted. Because the burden of proof on the Government is different in civil actions, a civil forefeiture of the firearms should not depend on the outcome of the criminal case. No constitutional rights are violated by the forfeiture of firearms subsequent to the owner's or possessor's acquittal of criminal charges. *United States* v. *One Assortment of 89 Firearms,* 465 U.S. 354 (1984). (b) The bill would allow the seizure and forfeiture of firearms "intended to be used" in a violation of the GCA only in connection with certain specified offenses. The list of specified crimes is too narrow, *e.g.,* while firearms intended to be received by persons under indictment may be seized, firearms intended to be received by persons such as felons, fugitives, mental incompetents and illegal aliens would not be subject to seizure and forfeiture.

8. *Relief from Disabilities.* Current law provides for the Secretary's granting of relief from Federal firearms disabilities to persons convicted of crimes punishable by imprisonment for a term exceeding 1 year. The bill would extend the right to apply for relief to other proscribed persons, *e.g.,* fugitives, adjudicated mental incompetents, illegal drug users and addicts, and illegal aliens, and provide for *de novo* judicial review of administrative action denying relief.

9. *Interstate Transportation of Firearms.* The bill allows the transportation of an unloaded, inaccessible firearm in interstate commerce notwithstanding any State law to the contrary. This provision would erode the integrity of State laws and impede the efforts of State and local law enforcement officials to enforce such laws. In other words, State prosecutors will find it difficult to rebut violators' contentions that their firearms were moving in interstate commerce. Issues raised in State prosecutions relative to when interstate commerce began and when it ended will be difficult to resolve. Furthermore, a prosecution involving a purely intrastate transportation of a firearm may be defeated by the possessor's contention that an interstate journey with the firearm had just commenced.

10. *Penalties for Violating GCA.* (a) The bill provides a knowledge or intent element of proof with respect to all GCA offenses, "knowledge" as to some and "willfulness" as to others. Willfulness may be interpreted to mean knowledge of the requirements of law and the specific intent to violate legal requirements. The willfulness element would make it extremely difficult to successfully prosecute many cases, *e.g.,* a nonlicensee's illegal interstate firearms purchases. (b) By reducting all licensee recordkeeping violations to

misdemeanors, serious violations could not be adequately prosecuted and punished, *i.e.*, a dealer's sale of firearms off-record and his willful refusal to make or maintain any required record could only be prosecuted as misdemeanors.

11. *Mandatory Penalties for Criminal Misuse of Firearms.* The bill weakens the existing mandatory penalty provision relative to the use or carrying of firearms in commission of a Federal crime of violence by: (a) adding an element to the carrying offense that the carrying be "in furtherance of" the violent crime (existing law already requires that the carrying be "in relation to" the underlying crime); and (b) allowing the court to avoid imposing the penalties if the defendant acted in self-defense. Relief from the mandatory penalties would occur after the defendant has been found guilty of using a firearm to commit a violent Federal crime. Moreover, the penalties could be removed even though the defendant failed to prove self-defense as a defense to the violent crime. The bill may be interpreted to allow a fleeing felon to avoid the penalties where he used a firearm to make his escape.

12. *Definition of Conviction.* The bill provides that what constitutes a felony conviction would be determined by the law of the jurisdiction where the conviction occurred. This would require the Bureau to examine the peculiar laws of each State to determine whether a person is convicted for Federal purposes. Further, any conviction which has been expunged or pardoned would not be considered a disabling offense under GCA. Under present law, State pardons and State court proceedings which set aside a plea or verdict of guilty upon a successful completion of probation do not eliminate the underlying conviction insofar as Federal law is concerned and such a person must still apply for and receive relief from Federal firearms disabilities.

13. *Collector Recordkeeping.* The bill would require that licensed collectors maintain only a record of acquisition and disposition of firearms, i.e., the so-called "bound book." Firearms Transaction Records, Forms 4473, executed by the purchaser and used by the seller to establish the purchaser's eligibility and identity would be eliminated. The Act was recently amended to permit the importation of surplus military curio or relic firearms and since 1984 thousands of such weapons have been imported. Many of these weapons now eligible for importation are standard military weapons manufactured as late as 1945. Because of these influx of the weapons into the country, law enforcement's need for licensed collectors to maintain Forms 4473 still exists.

In your assessment of the accuracy of the above analysis of the bill's strengths and weaknesses, you should be aware that we have primarily approached it from the standpoint of its ease of administration and its impact on law enforcement. The firearms industry (including licensed dealers), the various special interest groups, and other concerned and affected members of the public in all probability view our concerns from an entirely different perspective. Accordingly, they may well perceive strengths where we see weaknesses and vice versa. Nevertheless, I hope the above analysis will better prepare you to address questions concerning the bill over the months to come.

I believe that the appropriate role of ATF is to provide technical and professional comments to you and other decision makers. Whatever the final outcome, we will enforce the law (and any changes) as effectively as we can within existing resources.

STEPHEN E. HIGGINS.

ACTION BY THE SUBCOMMITTEE ON CRIME

The Subcommittee caucused on March 4 and 5, 1986 and determined to develop its own bill to address the needs of the firearms using community and the needs of law enforcement. On March 5, 1986, Mr. Hughes introduced H.R. 4305, the Federal Firearms Law Reform Act of 1986.

The Subcommitte on Crime marked up H.R. 4305 on March 6, 1986. Five amendments were adopted by the Subcommittee (discussed in the section by section analysis). The bill was approved unanimously and ordered reported as a clean bill. It was introduced on March 6, 1986 as H.R. 4332.

ACTION BY THE COMMITTEE

On March 11, 1986, a quorum being present, the Committee on the Judiciary approved H.R. 4332 by a recorded vote of 35–0 with an amendment in the nature of a substitute.

SECTION-BY-SECTION ANALYSIS

Section 1 is the short title.

Section 2. Prohibition on transfer and possession of silencers

(a) The definition of silencer is amended to include any part designed or redesigned and intended to be used as a silencer for a firearm. This will help to control the sale of incomplete silencer kits that now circumvent the prohibition on selling complete kits.

(b) This section prohibits the transfer and possession of silencers after the effective date of the Act not lawfully possessed on the effective date.

It allows current possessors of lawfully registered silencers to continue their legal possession and transfer such registered silencers in conformity with the law (the National Firearms Act).

The Subcommittee began examination of the criminal misuse and availability of silencers at a hearing on May 24, 1984. As of May 24, 1984 there were 12,801 silencers lawfully possessed and registered with the Secretary of the Treasury pursuant to the National Firearms Act. Yet during FY 1983, a total of 916 silencers were taken into custody by BATF, a significantly large number in comparison to the total number of legal silencers.[13]

This provision is substantially different from a provision relating to silencers in H.R. 3155 in that the status of all legally possessed silencers remains unchanged. The Committee adopted an amend-

[13] Letter from Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, to William J. Hughes, Chairman, Subcommittee on Crime in Hearings of the Subcommittee on Crime on H.R. 641 and Related Bills: Armor Piercing Ammunition and the Criminal Misuse and Availability of Machineguns and Silencers (97th Cong. 2nd sess., May 17, 24 and June 27, 1984, Serial No. 153) at 210–211.

ment eliminating authority for the Secretary of the Treasury to purchase silencers that may be surrendered to the Secretary.

(c) This subsection conforms the definition of the terms "firearm" in the Gun Control Act and the National Firearms Act to the amendments made by subsection (a). Paragraph (3) extends the current provisions of the Gun Control Act (i) prohibiting non-licensees from transporting, in interstate or foreign commerce, machine guns short-barreled rifles, short-barreled shotguns and destructive devices (except as specifically authorized by the Secretary consistent with public safety and necessity) to silencers, (18 U.S.C. 922(a)(4)) and (ii) prohibiting a licensee to sell or deliver a destructive device, machine gun, short-barreled rifle and short-barreled shotgun to any person (except as specifically authorized by the Secretary consistent with public safety and necessity) to silencers (18 U.S.C. 922(b)(4)).

Section 3. Lawful interstate sale of long guns

This section modifies the limitation in 18 U.S.C. 922(b)(3) on licensees to sell firearms to persons who do not reside in the State in which the licensee's place of business is located *to permit* sale or delivery of any rifle or shotgun to a non-resident if "the transferee meets in person with the transferor to accomplish the transfer" and the sale, delivery and receipt fully comply with the legal conditions of sale in both States. Licensees shall be presumed, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States.

This section was added by amendment offered by Rep. Shaw adopted by the Subcommittee on Crime. It is adapted from H.R. 945/S. 49.

Section 4. Unlawful sale, possession, or receipt of firearms and ammunition—extension of prohibition on sale to unqualified persons

This section makes it a crime for any person to transfer a firearm to another person knowing that such other person is unqualified. This section extends the prohibition which now applies only to Federal firearms licensees to all persons who transfer a firearm. (Current 18 U.S.C. 922(d) prohibits licensees to sell or dispose of firearms to anyone in one or more of four classes of unqualified persons "knowing or having reasonable cause to believe" that such person is unqualified.)

The Committee adopted an amendment offered by Mr. McCollum to set forth only a knowing state of mind for non-licensees which would require slightly more culpability than the "knowing or having reasonable cause to believe" standard carried forward for licensees.[14]

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[14] The requirement that the Government prove that prohibited conduct was "knowing" has been held to include "willful blindness." *United States* v. *Jewell*, 532 F.2d 697 (9th Cir.), *cert. denied*, 426 U.S. 951 (1976); and *United States* v. *Jacobs*, 475 F.2d 270 (2d Cir.), *cert. denied sub nom. Thayer* v. *United States*, 414 U.S. 821 (1973).

Willful blindness requires an awareness of a high probability of the existence of the circumstance. (*See United States* v. *Jewel*, 532 F.2d 697, 700 n.7 (9th Cir. 1976) quoting Glanville Williams, *Criminal Law*:

Continued

This section also combines in one section (18 U.S.C. 922(g)) all of the offenses related to sale of firearms *to* unqualified persons, and offenses of receipt, possession and transport of firearms *by* unqualified persons (or their employees) now divided between Title I of the Gun Control Act (18 U.S.C. 922(d), (g) and (h) and Title VII of the Omnibus Crime Control and Safe Streets Act (18 U.S.C. 1202(a) and (b). The Committee adopted technical amendments carrying forward the prohibition in 18 U.S.C. 1202(b) in this section and substituting the phrase "has renounced" for the work "renounces".

Persons are now unqualified from receiving, possessing or transporting firearms in interstate or foreign commerce or firearms which have been shipped or transported in interstate or foreign commerce if they are or have been:

(1) under indictment for or convicted of a felony; [15]

(2) a fugitive from justice;

(3) an unlawful user of or addicted to any controlled substance (N.B., infra);

(4) adjudicated as a mental incompetent or committed to any mental institution;

(5) discharged from the Armed Forces of the United States under dishonorable conditions;

(6) has renounced their United States' citizenship; or

(7) an alien illegally in the United States.

(N.B. This section also replaces and correctly modernizes the prohibition on receiving firearms or ammunition by a person "who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954)" by substituting "who is an unlawful user of or addicted to a controlled substance as defined in the Controlled Substances Act." Current law does not include hallucinogenic drugs that were controlled by the Controlled Substances Act, including the violence-inducing drug phencyclidine (PCP), various tranquilizers, designer drugs and other substances that have been added to the schedules of controlled substances.)

In subsection (b) Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 is repealed. The Armed Career Criminal Act of 1984, which was an amendment to title VII would be reenacted by section 8 of this bill. Section 923(d) (1)(B) of title 18, U.S.C., which authorizes the Secretary to deny a license under the Gun Control Act if a person is unqualified from receiving, shipping or transporting a firearm, is amended to conform to the changes made in this section.

This section is adapted from H.R. 945/ S. 49.

A court can properly find willful blindness only where it can *almost* be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is willful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. (emphasis added).

[15] Persons under indictment are prohibited from receiving or transporting firearms but may continue to possess them.

Section 5. Gun show sales

This section creates a new subsection (18 U.S.C. 922(h)) to permit the sale of a firearm to a person who does not appear in person at the licensee's business premises (in addition to the exception in 18 U.S.C. 922(c)) *to permit* sale in person at a temporary gun show or event sponsored by organizations devoted to, or that sponsor events devoted to, the collection , competitive use, or other sporting use of firearms and the location of the sale is in the state in which the licensee's business premises are located. Records of such dispositions of firearms shall be kept in the permanent records of the licensee at the location specified on the license. Business may not be conducted from a motorized or towed vehicle.

The Committee adopted an amendment offered by Mr. McCollum providing that any inspection or examination of inventory or records under this chapter by the Secretary at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. (The current provisions of 18 U.S.C. 922(h) are transferred to section 922(g) of title 18 U.S.C. by the amendment in section 4 of this bill.)

Subsection (b) of this section prohibits the Secretary from imposing any additional license fees (under 18 U.S.C. 923(a)) upon dealers who exercise the privilege of engaging in business at a temporary gun show or event.

This section is from H.R. 945/S. 49.

Section 6. Prohibition on the importation of Saturday Night Special barrels

This section expands the current prohibition in 18 U.S.C. 923(1) on the importation of key components of "Saturday night specials" to ban the import of barrels for Saturday night specials. 18 U.S.C. 922(1) prohibits the importation of any firearm that is not imported under the provisions of 18 U.S.C. 925(d) which generally requires that the firearm be "generally recognized as particularly suitable for or readily adaptable to sporting purposes." The Secretary has determined that handguns commonly know as "Saturday night specials" are not so recognized, and thus may not be imported. The frames and receivers of firearms are considered firearms under the definition of the term "firearm" (18 U.S.C. 921(a)(3)) and thus cannot be imported currently.

The Attonery General's Task Force on Violent Crime specifically recommended that the importation of the unassembled parts of Saturday night specials be prohibited.[16]

This section is taken from S. 49.

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[16] "Recommendation 19:

"Title I of the Gun Control Act of 1968 prohibits the importation of certain categories of handguns. However, the Act does not prohibit the importation of the unassembled parts of these guns, thereby permitting the circumvention of the intended purpose of this title of the Act. It is therefore recommended that the Act be amended to prohibit the importation of unassembled of handguns which would be prohibited if assembled." Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 29.

Section 7. Administrative flexibility for invoking license-related penalties and other licensing-related matters

(a) This subsection limits the Secretary to requiring information on applications for licenses only that information necessary to determine eligibility for licensing.

This provision is taken from S. 49 and was added by amendment adopted by the Subcommittee on Crime.

(b) This subsection aids law enforcement by broadening the circumstances to be reviewed by the Secretary in approving applications for a license under the GCA. Currently applications for a license cannot be approved if the applicant is prohibited from transporting, shipping, or receiving firearms or ammunition under *Federal* law. The bill permits the Secretary to deny a license application if the applicant is "prohibited by applicable *State* law from engaging in conduct necessarily incident to business subject to license" under the Gun Control Act (for example, relating to the receipt or transportation of firearms under State law, collecting state sales taxes, or otherwise operating a business). It makes no sense for the Secretary to have to issue a license for a person to engage in business in a State when the Secretary is aware such person is forbidden by the law of that State from engaging in that business, or any other business.

This subsection is taken from H.R. 3155.

(c) *Administrative Flexibility for Invoking License—Related Penalties:*

This subsection gives the Secretary an alternative, less severe sanction that may be used to punish less serious violations of the Gun Control Act by licensees. It would allow the Secretary to suspend a license as an alternative to the sole penalty now available of revocation of the license. Revocation would remain an available sanction where appropriate. This subsection is taken from H.R. 3155.

Subsection (d) limits the number of compliance inspections the Secretary may conduct to not more than three in any 18 month period unless the Secretary or the Director of the Bureau of Alcohol, Tobacco, and Firarms personally approves such inspection. The authority to approve compliance inspections in excess of three in any 18 month period may not be delegated below the level of the Director of the Bureau of Alcohol, Tobacco and Firearms. This limitation was adopted by an amendment offered by Mr. McCollum and adopted by the Subcommittee on Crime.

Section 8. Modification of penalty provisions and reenactment of armed career criminal provisions

Paragraphs (1) and (2) require proof of a knowing state of mind for the prohibited conduct for the felony violations of the GCA. Case law interpreting the criminal provisions of the Gun Control Act have required that the government prove that the defendant's conduct was knowing, but not that the defendant knew that his conduct was in violation of the law.[17] It is the Committee's intent,

[17] *United States* v. *Freed*, 401 U.S. 601, 607-610 (1971).

that unless otherwise specified, the knowing state of mind shall apply to circumstances and results. This comports with the usual interpretations of the general intent requirements of current law.[18]

The Committee specifically rejected the proposals in S. 49 and H.R. 945 that a standard of "willfulness" be adopted as a state of mind requirement for certain offenses. It had been suggested, in support of the state of mind formulations in S. 49, that "A firearms law concerned about right and wrong and those who do evil will make intent to do evil, an element of the violation." [19] Yet the criminal law traditionally does not require proof that the defendant knew that his conduct was in violation of the law [20] or that the defendant intended to violate the law.[21] In fact the term "willful" fails to give courts any clear guidance of the *scienter* required. "[T]he term 'willful' has been construed by the courts in a variety of ways, often inconsistent and contradictory. The courts have defined a 'willful' act as an act done voluntarily as distinguished from accidentally, an act done with specific intent to violate the law, an act done with bad purpose, an act done without justifiable excuse, an act done stubbornly, an act done without grounds for believing it is lawful, and an act done with careless disregard whether or not one has the right to so act." [22]

This provision is adapted from H.R. 945/S. 49.

Misdemeanor penalty for violation of recordkeeping requirements

Paragraph (3) reduces the penalty for knowing violation of recordkeeping requirements of the Gun Control Act (18 U.S.C. 922(b)(5) and 922(m)), and for violation of the requirement that the licenses be kept posted (18 U.S.C. 923(h)), to a misdemeanor.

This paragraph is adapted from H.R. 945/S. 49.

This section reenacts the Armed Career Criminal Act of 1984 to conform to the amendments made by section 4. The Armed Career Criminal Act is consistent with Recommendation 21 of the Final Report of the Attorney General's Task Force on Violent Crime regarding Federal prosecution of felons apprehended in the possession of a firearm.[23] This avoids a defect of H.R. 945 which would have repealed that act.

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[18] "In a general sense . . . 'knowledge' corresponds loosely with the concept of general intent." *United States* v. *Bailey*, 444 U.S. 394, 405 (1980).

[19] Statement submitted to the Subcommittee on Crime of Mr. Jerry Prieser, President, Federation of New York State Rifle and Pistol Clubs, Inc., October 28, 1985, at hearing in New York City.

[20] *United States* v. *Currier*, 621 F.2d 7, 9–10 (1st Cir. 1980).

[21] Mr. Justice Holmes defined general intent, "If a man intentionally adopts certain conduct in circumstances known to him, and that conduct is forbidden by the law under the circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent." *Ellis* v. *United States*, 206 U.S. 246, 257 (1907). *See also United States* v. *Haldeman*, 559 F.2d 31 (D.C. Cir. 1976), *cert. denied sub nom. Ehrlichman* v. *United States*, 413 U.S. 933 (1977); *United States* v. *Byrd*, 352 F.2d 570 (2d Cir. 1965).

[22] Senate Rep. 97-307 to accompany S. 1630, The Criminal Code Reform Act of 1981 (97th Cong., 1st sess.) at 63–64. *See also Working Papers* of the National Commission on Reform of Federal Criminal Laws, July 1970, Vol. I at 148, and cases cited therein.

[23] Recommendation 21, Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 30.

Section 9. Recordkeeping and reporting amendments

(a) Eliminate ammunition sale recordkeeping

This subsection would eliminate recordkeeping in the sale of ammunition in quantities of less than 1,000 rounds except for armor-piercing ammunition. This would eliminate extensive recordkeeping which serves no law enforcement purpose. (The House passed on December 17, 1985, H.R. 3132, The Law Enforcement Officers Protection Act of 1985, to control the manufacture, importation and sale of armor-piercing ammunition. The Senate passed H.R. 3132 with an amendment in the nature of a substitute (the text of S. 104, as amended) on March 6, 1986. The recordkeeping exception for armor-piercing ammunition is in recognition of the serious threat presented to law enforcement officers by the availability of armor piercing ammunition and in anticipation of the enactment of additional controls on such ammunition.)

This approach avoids the total decontrol on the sale of ammunition that would result from the amendments of H.R. 945 and S. 49. Under that approach, no license would be required for the sale of ammunition.

This provision is adapted from H.R. 945 and S. 49, and H.R. 3155.

(b) Codification of existing regulation requiring reports of multiple firearm sales

This subsection enacts the current regulation requiring multiple firearms sales, adding it to 18 U.S.C. 923(g).[24] This provision is taken from S. 49 and was added by amendment offered by Rep. McCollum and adopted by the Subcommittee on Crime.

Section 10. Mandatory penalty for the use of a firearm, or the use or carrying of a firearm loaded with armor-piercing ammunition, during and in relation to drug trafficking crimes

(a) This subsection provides that whoever uses or carries a firearm during and in relation to the manufacture, distribution, or importation of controlled substances shall be subject to a mandatory prison term of five years in prison. This section expands the coverage of the mandatory prison term for using or carrying a firearm during and in relation to a Federal crime of violence enacted in October 1984. This amendment is consistent with Recommendation 17 of The Attorney General's Task Force on Violent Crime that the mandatory prison term for the use of a firearm apply not only to the commission of crimes of violence but to the commission of Federal felonies generally.[25] This provision is adapted from S. 49.

(b) This subsection was added by amendment adopted by the Subcommittee on Crime to the mandatory penalty for using or carrying a firearm loaded with armor-piercing ammunition during and in relation to the commission of violent crimes (18 U.S.C. 929(a), enacted October 12, 1984) to cover such conduct during and in relation to drug trafficking crimes.

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[24] 27 Code of Federal Regulations § 178.126a Reporting multiple sales or other dispositions of pistols and revolvers.

[25] Recommendation 17, Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 29.

Section 11. Enhanced penalty for machine gun use in crime and other machine-gun related matters

Subsection (a) adds a new manadatory prison term of ten years for using or carrying a machine gun during and in relation to a crime of violence or a drug trafficking offense for a first offense, and twenty years for a subsequent offense to the mandatory penalty provision of 18 U.S.C. 924(c).

Subsection (b) amends the definition of machine gun to include any *part* designed and intended to be used for converting any weapon into a machine gun. It amends the definition of machine gun in the National Firearms Act and defines "machine gun" for the Gun Control Act by cross reference to the National Firearms Act. This will help to control the sale of incomplete machine gun conversion kits that now circumvent the prohibition on selling completed kits. Section 11 incorporates a recommendation by the Administration.[26] This provision is also related to Recommendation 20 of the Attorney General's Task Force on Violent Crime regarding the easy conversion of semi-automatic weapons into fully automatic weapons.[27] This section is new to this legislation.

Section 12. Limitation on forfeiture of firearms to felony violations

This section limits the forfeiture of firearms permitted under 18 U.S.C. 924(d) only to those involved in or intended to be involved in felony violations of the law. This is a major narrowing of the current law which now permits forfeiture of firearms involved in or used in any violation of the Gun Control Act or its regulations. It addresses a major concern of firearms licensees who have, on occasion, had their inventory of firearms forfeited due to errors in the records required to be kept under the act.

This section is adapted from H.R. 945/S. 49.

Section 13. Broadened relief from disabilities

This section reforms the provisions of 18 U.S.C. 925(c) to improve the ability of the deserving members of the public to obtain relief from the legal disqualification from firearms ownership (possession or receipt).

The current law (Title I of the Gun Control Act, 18 U.S.C. 922(d), (g) and (h)) and title VII of the Omnibus Crime Control and Safe Streets Act (18 U.S.C. Appendix II, section 1202)) provides that seven categories of persons are unqualified from receiving, possessing, shipping, transferring, or transporting firearms in interstate or foreign commerce or which have been shipped or transported in interstate or foreign commerce. (See section 4 of this bill which amends 18 U.S.C. 922(g) and combines those provisions in a single subsection).

A procedure for relief from such disabilities (18 U.S.C. 925(c)) is now provided *only* for persons who have been convicted of certain felonies. The Gun Control Act did not permit persons convicted of

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[26] Testimony of Stephen E. Higgins, Director of the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, at hearings before the Subcommittee on Crime, February 19, 1986.

[27] Recommendation 20, Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 29, 32.

felonies under the Gun Control Act, many of which are administrative in nature, to petition for relief of the disability. This omission has been felt to be an unjust discrimination by the sporting public.

The failure of the Gun Control Act to provide a procedure for relief of former mental patients resulted in a challenge to the validity of this disqualification for mental patients that was upheld by the United States District Court of New Jersey, and which is now on appeal to the United States Supreme Court.[28]

This section would allow any person in the disqualified class to petition the Secretary for relief of the disability.

This section is taken from S. 49.

Secondly, in the evolution of State law statutes are often enacted which have the effect of expunging criminal convictions for conduct that is no longer deemed criminal or felonious. The Secretary is empowered to declare that each person obtaining relief under such State law is relieved from disability under Federal law. This subsection was adapted from H.R. 3155 and was simplified by an amendment adopted by the Subcommittee on Crime.

Section 14. Interstate transport of rifles and shotguns

This section has been included to assure the right of an individual to travel in and between States with a rifle or shotgun, notwithstanding the firearms laws of those States (and any local jurisdictions through which such individual may pass), (1) if such individual can lawfully possess such a firearm: (2) if the rifle or shotgun is secured (it is enclosed or cased, it is not readily accessible, and it is unloaded); and (3) it is transported for the purpose of participating in or returning from legal hunting, shooting events, or sporting activity, or for changing such individual's State or residence.

This provision has been drawn very narrowly because it is preemption of the laws of the various States and their subdivisions. The Committee is very sensitive to the fact that many States and a great many local jurisdictions have enacted specific controls upon the carrying and transportation of handguns. Handguns are widely used to commit crimes of violence. According to the Attorney General's Task Force on Violent Crime, 77.8% of the firearm murders in the United States in 1978 involved the use of a handgun.[29] The Uniform Crime Reports since that time show that the involvement of handguns in murders committed with firearms has stayed at equally high levels.[30]

Many states have adopted comprehensive systems to control the manner in which handguns may be acquired, carried and transported. In fact some 8 States include in their State constitutional guarantee of a right to keep and bear arms a specific exception regarding the carrying of concealed weapons.[31] Some 34 States re-

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[28] *Galioto* v. *Department of the Treasury*, 602 F. Supp. 682 (D.C.N.J., Feb. 7, 1985); —U.S.—, 106 S. Ct. 307, jurisdiction noted, Nov. 4, 1985.

[29] Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981 at 29-33, Recommendations 17-22; Report to the Nation on Crime and Justice: The Data, Bureau of Justice Statistics, U.S. Department of Justice, October 1983 at 14.

[30] Crime in the United States—1984: Uniform Crime Reports for the United States, Federal Bureau of Investigation, U.S. Department of Justice, July 28, 1985 (Printed annually), pp.10–11.

[31] Colorado, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Carolina, cited in Ronhovde, Kent M., The Second Amendment: A Legal Analysis, Congressional Research Service, Library of Congress, March 24, 1977, Appendix B.

quire some form of a permit to carry a handgun.[32] Consequently the Committee was unwilling to extend this preemption to cover easily concealed firearms.

This provision does not exempt any resident of a state or local jurisdiction from any of the requirements of such State or local law.

This provision is adapted from H.R. 945/S. 49. An amendment was offered by Rep. Shaw and adopted by the Subcommittee on Crime to permit such travel with a secured rifle or shotgun for any lawful sporting activity.

Section 15. Record check for criminal convictions and other disqualifications for the purchase of handguns

This section provides for a notification to law enforcement authorities of a handgun purchase to permit a check of records of criminal conviction or other disqualification of the purchaser.

The notification is made by the licensee by mailing a copy of the form required to be filled out by the purchasers of firearms, (1) to the chief law enforcement officer of the place of residence of the purchaser, and (2) to the FBI. The form includes a sworn statement by the purchaser setting forth full name, sex, height, weight, race, residence address, date of birth, place of birth, and a declaration whether or not they are subject to any of the disqualifications of the law. (Representative of the type of form the Committee contemplates is Firearms Transaction Record Part I (ATF Form 4473 (5300.9) Part I (2-85))). The licensee completes the form by stating either that the purchaser is known to the licensee or that the purchaser identified himself in a manner described on the form specifying the type of identification (e.g. driver's license) and any number on the identification (which in many instances will be the purchaser's social security number). The FBI shall examine its criminal history records which may reveal a circumstance making illegal the receipt or possession of the handgun by the transferee. If the FBI finds evidence of such a disqualification, it shall notify such chief law enforcement officer.

The licensee may transfer the handgun as soon as is permitted under State and local law after the purchaser completes the necessary forms.

One of the major recommendations of the Attorney General's Task Force on Violent Crime (appointed by President Ronald Reagan's first Attorney General, William French Smith) was that the Gun Control Act of 1968 should be amended to prohibit "dangerous individuals from acquiring firearms" by providing

> That a waiting period be required for the purchase of a handgun to allow for a mandatory records check to ensure that the purchaser is not in one of the categories of persons who are proscribed by existing federal law from possessing a handgun.[33]

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[32] "Survey of Select State Firearm Control Laws" by Kent M. Ronhovde and Gloria P. Sugars in Federal Regulation of Firearms: A Report Prepared for the Use of the Committee on the Judiciary, United States Senate, by the Congressional Research Service, Library of Congress, December 30, 1981 (Printed May 1982), 97th Cong. 2d Sess. Judiciary Committee Print at 204-228.

[33] Recommendation 18(b), Final Report of the Attorney General's Task Force on Violent Crime, U.S. Department of Justice, August 17, 1981, at 29.

The Task Force made a number of salient points. First, "There is, at present, no effective method to verify a purchaser's eligibility." Second, "Since drug addicts, felons, mental defectives, and the like are not the best risk for 'the honor system,' a waiting period between the time of signing the presently required form and delivery of the handgun to the purchaser to verify the purchaser's eligibility is *sensible and necessary* to effectuate the purposes of the Acts." (emphasis added). Third, ". . . to be effective there should be adequate record check methods available." [34]

The Subcommittee on Crime and the Committee discussed the question of a waiting period extensively. Although there was strong support for a 15-day waiting period, there was also strong opposition, to some degree on the basis of the inconvenience to the prospective handgun purchaser, but in large measure based upon a concern that inclusion of a waiting period provision would preclude the establishment of a broad consensus in support of the Committee's bill.

As a compromise, the Subcommittee developed the approach included in this section to give to law enforcement the best possible means of learning when disqualified persons may be illegally acquiring handguns.

The Committee believes that this notification will provide support to law enforcement efforts to identify and prosecute armed felons. It will enable law enforcement resources to be directed against convicted felons known to have broken the law by buying a handgun.

All reports received under this section must be destroyed within 90 days of being received if there is no evidence that the receipt of the handgun by the transferee was illegal.

This provision is new and does not create a waiting period.

Committee Approval

On March 11, 1986, a quorum being present, the Committee on the Judiciary approved H.R. 4332 by a recorded vote of 35–0 with an amendment in the nature of a substitute.

Oversight Findings

The Committee makes no oversight findings with respect to this legislation other than those included in the text of this report.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 4332 creates no new budget authority or increased tax expenditures for the Federal Government.

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[34] *Ibid.*, at 31.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

Federal Advisory Committee Act of 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

Cost Estimate

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office.

Statement of the Congressional Budget Office

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 4332.

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 13, 1986.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 4332, the Federal Firearms Reform Act of 1986, as ordered reported by the House Committee on the Judiciary, March 11, 1986.

This bill makes a number of amendments to the Gun Control Act of 1968 (GCA) concerning unlawful sale, possession or receipt of firearms and ammunition, recordkeeping and penalties. Several of these amendments would result in additional costs for federal agencies, totaling at least $30 billion to $40 million anually. We expect this bill to result in no significant cost to state or local governments.

The largest potential budgetary effect of the bill would result from the provisions of section 15, which require the Federal Bureau of Investigation (FBI) to conduct criminal history checks in association with all handgun purchases. The cost of this requirement would depend on the type of check performed. The FBI estimates that name checks cost approxiamtely $8 to $10, while fingerprint checks cost approximately $14. Based on information from the National Association of Firearms Dealers and the Bureau of Alcohol, Tobacco and Firearms (BATF), we estimate that from 3 million to 5 million transactions each year would be covered by this provision, resulting in additional costs of $30 million to $40 million annually for the FBI if only name checks are made, or $50 million to $60 million per year if fingerprint checks are made.

Section 15 also requires that local law enforcement officials be notified of each such transaction, and that the FBI report to these officials any finding of illegality in the purchase of a handgun. This may result in some administrative costs for local governments, but they are not expected to be significant.

Section 13 would broaden the category of persons eligible to seek relief from provisions of the GCA disqualifying them from receiving, possessing, shipping, transferring, or transporting firearems in interstate or foreign commerce. The BATF currently receives approximately 3,000 applications for such relief each year, but about half of these are automaticaliy rejected under current law. This section would require the BATF to review all applications on their merits. We estimate that this increased workload would cost the agency approximatley $2 million per year.

This bill also repeals and re-enacts provisions of the Comprehensive Crime Control Act establishing penalties for firearms violations by convicted felons. While this creates no new responsibilities for the BATF, it appears that additional funds would be required to fully enforce existing provisions. The BATF estimates that an additional $5 million annually would be necessary for this purpose, largely for additional agents. This amentment also increases the maximum prison term for convicted felons found in violation of firearms laws from 2 years to 5 years, but decreases the maximum penalty for $10,000 to $5,000.

Section 7 of the bill broadens the factors to be reviewed by the Treasury Department in approving an application for a license to import, manufacture, or sell firearms or ammunition, to include provisions of state law effectively prohibiting the licensed activity. This provision would have no significant budgetary impact, assuming that the BATF is required to consider only state statutes, and not local ordinances.

Section 929 of Title 18, U.S.C., imposes a mandatory penalty for using or carrying a firearm loaded with armor-piercing ammunition during and in relation to the commission of violent crimes. Section 10 of the bill amends this provision to include such conduct in association with drug trafficking crimes. This would require the BATF to conduct additional testing of ammunition, and would result in additional costs of approximately $0.2 million per year.

If you wish further detail on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 44—FIREARMS

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§ 921. Definitions

(a) As used in this chapter—
(1) * * *

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(3) The term "firearm" means (A) any weapons (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any [firearm muffler or firearm silencer] *muffler or silencer for a firearm;* or (D) any destructive device. Such term does not include an antique firearm.

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(21) The terms "silencer" and "muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, includng any part or combination of parts designed or redesigned and intended for such use with a firearm.
(22) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).
(23) The term "handgun" means a firearm which has a short stock and is designed to be held and fired by the use of a single hand.

* * * * * * *

§ 922. Unlawful acts

(a) It shall be unlawful—
* * *

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(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun [(as defined in section 5845 of the Internal Revenue Code of 1954),] *silencer* short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity;

* * * * * * *

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—
(1) * * *

* * * * * * *

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph [(A) shall not apply to the sale or delivery of a rifle or shotgun to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence permits such sale or delivery by law, the sale fully complies with the legal conditions of sale in both such contiguous States, and the purchaser and the licensee have, prior to the sale, or delivery for sale, of the rifle or shotgun, complied with all of the requirements of section 922(c) applicable to intrastate transactions other than at the licensee's business premises,] (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes, and (C) shall not preclude any person who is participating in any organized rifle or shotgun match or contest, or is engaged in hunting, in a State other than his State of residence and whose rifle or shotgun has been lost or stolen or has become inoperative in such other State, from purchasing a rifle or shotgun in such other State from a licensed dealer if such person presents to such dealer a sworn statement (i) that his rifle or shotgun was lost or stolen or became inoperative while participating in such a match or contest, or while engaged in hunting, in such other State, (ii) identifying the chief law enforcement officer of the locality in which such person resides, to whom such licensed dealer shall forward such statement by registered mail;

(4) to any person any destructive device, machinegun [(as defined in section 5845 of the Internal Revenue Code of 1954),] *silencer,* short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Secretary consistent with public safety and necessity; and

* * * * * * *

[(d) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

[(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

[(2) is a fugitive from justice;

[(3) is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4371(a) of the Internal Revenue Code of 1954); or

[(4) has been adjudicated as a mental defective or has been committed to any mental institution.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.]

(d)(1) It shall be unlawful for a licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or otherwise transfer a handgun to an individual who is not licensed under section 923 unless such importer, manufacturer, or dealer promptly sends by registered or certified mail (return receipt requested), a copy of the documentation of the transaction required under this chapter, in a form prescribed by the Secretary—

(A) to the chief law enforcement officer of the place of residence of the transferee notifying such officer of the transaction; and

(B) to the Federal Bureau of Investigation which shall—

(i) examine Federal official records which may reveal any circumstance making illegal the receipt or possession of a handgun by the transferee; and

(ii) report to the chief law enforcement officer of the place of residence of the transferee if any such records show any such circumstance.

(2) The chief law enforcement officer of the place of residence of the transferee and the Federal Bureau of Investigation shall each destroy each report received under this section from any licensee concerning any transferee, within 90 days after the date such report is received, if such report does not indicate any circumstance making illegal the receipt or possession of a handgun by the transferee.

* * * * * * *

[(g) It shall be unlawful for any person—

[(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

[(2) who is a fugitive from justice;

[(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

[(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

to ship or transport any firearm or ammunition in interstate or foreign commerce.]

(g)(1) It shall be unlawful for any person—

(A)(i) if such person is a licensee under this chapter, to sell or otherwise dispose of any firearm or ammunition to any other person, knowing or having reasonable cause to believe that such other person is unqualified; or

(ii) if such person is not such a licensee, to sell or otherwise dispose of any firearm or ammunition to any other person, knowing that such other person is unqualified;

(B) to ship or transport any firearm or ammunition in interstate or foreign commerce, if such person is unqualified;

(C) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, if such person is unqualified; or

(D) to receive, possess, or transport any firearm in or affecting interstate or foreign commerce, if—

(i) such person is unqualified (unless such person is unqualified only because such person is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year); or

(ii) in the course of such person's employment by another person, such person knows that other person is unqualified (unless such other person is unqualified only because such person is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year).

(3) For purposes of paragraph (1), a person is unqualified if that person—

(A) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

(B) is a fugitive from justice;

(C) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(D) has been adjudicated as a mental incompetent or committed to any mental institution;

(E) has been discharged from the Armed Forces under dishonorable conditions;

(F) has renounced that person's United States citizenship; or

(G) is an alien illegally in the United States.

[(h) It shall be unlawful for any person—

[(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

[(2) who is a fugitive from justice;

[(3) who is an unlawful user of or addicted to marihuana or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act) or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954); or

[(4) who has been adjudicated as a mental defective or who has been committed to any mental institution;

to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.**]**

(h) In any case not otherwise prohibited by this chapter, a licensed dealer may sell or otherwise dispose of a firearm to a person who does not appear in person at the licensee's business premises if such sale or disposition takes place during and at a temporary gun show or event sponsored by any national, State, or local organization, or affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use, or other sporting use of firearms and the location of such sale or disposition is in the State specified in the license of such licensee. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license of such licensee. Any inspection or examination of inventory or records under this chapter by the Secretary at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall authorize such licensee to conduct business in or from any motorized or towed vehicle.

* * * * * * *

(*l*) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter. *It shall be unlawful for any person knowingly to import into the United States the barrel of any firearm if the importation of that firearm is prohibited by this section.*

* * * * * * *

(n)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a silencer.

(2) This subsection does not apply with respect to——

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a silencer that was lawfully possessed before the date this subsection takes effect.

§ 923. Licensing

(a) No person shall engage in business as a firearms or ammunition importer, manufacturer, or dealer until he has filed an application with, and received a license to do so from, the Secretary. The application shall be in such form and contain **[**such information**]** *only that information necessary to determine eligibility for licensing as the Secretary shall by regulation prescribe. Each applicant shall pay a fee for obtaining such a license, a separate fee being required for each place (other than at a temporary location described in sec-*

tion 922(h) of this title) in which the applicant is to do business, as follows:

(1) If the applicant is a manufacturer—

(A) of destructive devices or ammunition for destructive devices, a fee of $1,000 per year;

(B) of firearms other than destructive devices, a fee of $50 per year; or

(C) of ammunition for firearms other than destructive devices, a fee of $10 per year.

* * * * * * *

(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

(A) the applicant is twenty-one years of age or over;

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) [and (h)] of this chapter; [and is not prohibited by applicable State law from engaging in conduct necessarily incident to business subject to license under this chapter;]

* * * * * * *

(e) The Secretary may, after notice and opportunity for hearing, *suspend or* revoke any license issued under this section if the holder of such license has violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter. The Secretary's action under this subsection may be reviewed only as provided in subsection(f) of this section.

(f)(1) Any person whose application for a license is denied and any holder of a license which is *suspended or* revoked shall receive a written notice from the Secretary stating specifically the grounds upon which the application was denied or upon which the license was *suspended or* revoke. Any notice of a revocation of a license shall be given to the holder of such license before the effective date of the *suspension or* revocation.

(2) If the Secretary denies an application for, or [revokes,] a license, he shall, upon request by the aggrieved party, promptly hold a hearing to review [his denial or revocation] *that action.* In the case of a *suspension or* revocation of a license, the Secretary shall upon the request of the holder of the license stay the effective date of the *suspension or* revocation. A hearing held under this paragraph shall be held at a location convenient to the aggrieved party.

(3) If after a hearing held under paragraph (2) the Secretary decides not to reverse [his decision to deny an application or revoke a license,] *the action reviewed,* the Secretary shall give notice of his decision to the aggrieved party. The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a judicial review of such [denial or revocation.]

action. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding. If the court decides that the Secretary was not authorized to deny the application or to *suspend or* revoke the license, the court shall order the Secretary to take such action as may be necessary to comply with the judgment of the court.

(g) [Each] *(1) Except as provided in paragraph (2), each* licensed importer, licensed manufacturer, licensed dealer, and licensed collector shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, of firearms and ammunition except .22 caliber rimfire ammunition at such place, for such period, and in such form as the Secretary may by regulations prescribe. Such importers, manufacturers, dealers, and collectors shall make such records available for inspection at all reasonable times, and shall submit to the Secretary such reports and information with respect to such records and the contents thereof as he shall by regulations prescribe. *Each licensee shall submit such a report to the Secretary with respect to each sale or other disposition to an unlicensed person by that licensee, in 1 or more transactions during any period of 5 consecutive business days, of any combination of pistols and revolvers totaling 2 or more. Such report with respect to such sale or disposition shall be forwarded to the office specified by the Secretary not later than the close of business on the day such sale or other disposition is completed. The Secretary may inspect the inventory and records of a licensee for the purpose of ensuring compliance with the recordkeeping requirements of this chapter not more than three times during any 18-month period, unless the Secretary or the Director of the Bureau of Alcohol, Tobacco, and Firearms approves such inspection.* The Secretary may enter during business hours the premises (including places of storage) of any firearms or ammunition importer, manufacturer, dealer, or collector for the purpose of inspecting or examining (1) any records or documents required to be kept by such importer, manufacturer, dealer, or collector under the provisions of this chapter or regulations issued under this chapter, and (2) any firearms or ammunition kept or stored by such importer, manufacturer, dealer, or collector at such premises. Upon the request of any State or any political subdivision thereof, the Secretary may make available to such State or any political subdivision thereof, any information which he may obtain by reason of the provisions of this chapter with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received firearms or ammunition, together with a description of such firearms or ammunition.

(2) The Secretary shall not require the keeping of any records under this chapter with respect to the sale of ammunition (other than armor-piercing ammunition, as such term is defined in section 929 of this title) in transactions involving less than 1,000 rounds.

* * * * * * *

§ 924. Penalties

(a) [Whoever violates] *(1) Except as otherwise provided in this subsection, whoever knowingly engages in conduct that is a viola-*

tion of any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or in applying for any license or exemption or relief from disability under the provisions of this chapter, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(2) Whoever knowingly engages in conduct that is a violation of section 922(b)(5), 922(m), or 923(h) of this title and has not been previously convicted of a violation of such section shall be fined under this title or imprisoned not more than one year, or both, rather than as provided under paragraph (1) of this subsection.

(3) Any person who knowingly engages in conduct that is a violation of section 922(g)(1)(D) of this title and has been convicted on 3 previous occasions of robbery, burglary, or both—

(A) shall be fined under this title and imprisoned not less than 15 years;

(B) notwithstanding any other provision of law, shall not be granted any suspended or probationary sentence with respect to such violation; and

(C) shall not be eligible for parole from any sentence imposed with respect to such violation.

(4) As used in paragraph (3)—

(A) the term "robbery" means any felony consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily harm; and

(B) the term "burglary" means any felony consisting of entering or remaining surreptitiously within a building that is the property of another, with intent to engage in conduct constituting a Federal or State offense.

(5) As used in paragraph (4), the term "felony" means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less.

* * * * * * *

(c)*(1)* Whoever, during and in relation to any crime of violence, *or drug trafficking crime,* including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence, *or drug trafficking crime,* be sentenced to imprisonment for five years**[**.**]**, *and if the firearm is a machinegun, to imprisonment for 10 years.* In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years**[**.**]**, *and if the firearm is a machinegun, to imprisonment for 20 years.* Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with

any other term of imprisonment incuding that imposed for the crime of violence *or drug trafficking crime* in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

(2) As used in this subsection, the term "drug trafficking crime" means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(d) Any firearm or ammunition involved in or used or intended to be used in, any *felony* violation of the provisions of this chapter [or any rule or regulation promulgated thereunder], or any *felony* violation of any other criminal law of the United States, shall be subject to seizure and forfeiture and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

§ 925. Exceptions: Relief from disabilities

(a) * * *

* * * * * * *

(c) A person who [has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)] *prohibited by Federal law from acquiring, receiving, transferring, shipping, transporting, or possessing firearms or ammunition* may make application to the Secretary for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, *transportation,* or possession of firarms [and incurred by reason of such conviction], and the Secretary may grant such relief if it is established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter by reason of such a conviction, shall not be barred by such conviction from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Secretary grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor. *If the Secretary determines that relief from disabilities, incurred by reason of a conviction under State law and imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms, would be consistent with the purposes of this chapter when such expungement or elimination occurs under any State law regarding the expungement of criminal*

convictions, the Secretary may declare that all persons obtaining relief under such State law are relieved from such disabilities.

(d) The Secretary may authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun [as defined in section 5845(b) of the Internal Revenue Code of 1954] (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

* * * * * * *

§ 927. Effect on State law

(a) No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

(b) Notwithstanding any provision of State law or of any published ordiance to the contrary, any individual may transport any secured shotgun or secured rifle from such individual's place of origin to any destination State if—

(1) such transport is—

(A) incident to the change of the individual's State of residence; or

(B) for the purpose of lawful participation in, or returning from lawful participation in—

(i) hunting;

(ii) a shooting match or contest; or

(iii) any other lawful sporting activity; and

(2) the individual may lawfully transport and possess such shotgun or rifle—

(A) in the individual's place of origin, the destination State, and the destination political subdivision of the destination State; and

(b) under Federal law.

(c) For purposes of subsection (b)—

(1) a rifle or shotgun is secured if the rifle or shotgun—

(A) is enclosed or cased;

(B) is not readily accessible; and

(C) is not loaded with ammunition; and

(2) the term "place of origin" means—

(A) in the case of a change of residence, the State and political subdivision thereof from which residence is changed; and

(B) in any other case, the State and political subdivision thereof in which the possession or transport of the rifle or shotgun begins.

* * * * * * *

§ 929. Use of restricted ammunition

(a) *(1)* Whoever, during and in relation to the commission of a crime of violence *or drug trafficking crime,* including a crime of violence *or drug trafficking crime,* which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device for which he may be prosecuted in a court of the United States, uses or carries any handgun loaded with armor-piercing ammunition as defined in subsection (b), shall, in addition to the punishment provided for the commission of such crime of violence *or drug trafficking crime,* be sentenced to a term of imprisonment for not less than five nor more than ten years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor-piercing handgun ammunition was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

(2) As used in this subsection, the term "drug trafficking crime" means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

* * * * * * *

SECTION 5845 OF THE NATIONAL FIREARMS ACT

SEC. 5845. DEFINITIONS.

For the purpose of this chapter—

(a) FIREARM.—The term "firearm" means (1) a shotgun having a barrel of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machine gun; **[**(7) a muffler or a silencer for any firearm whether or not such firearm is included within this definition;**]** *(7) any silencer (as defined in section 921 of title 18, United States Code);* and (8) a destructive device. The term "firearm" shall not include an antique firearm or any device (other than a machine gun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) MACHINE GUN.—The term "Machine gun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any *part or* combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

* * * * * * *

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

* * * * * * *

[TITLE VII—UNLAWFUL POSSESSION OR RECEIPT OF FIREARMS

[§ 1201. Congressional findings and declaration

[The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

[(1) a burden on commerce or threat affecting the free flow of commerce,

[(2) a threat to the safety of the President of the United States and Vice President of the United States,

[(3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

[(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

[§ 1202. Receipt, possession, or transportation of firearms

[(a) PERSONS LIABLE; PENALTIES FOR VIOLATIONS.—Any person who—

[(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

[(2) has been discharged from the Armed Forces under dishonorable conditions, or

[(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

[(4) having been a citizen of the United States has renounced his citizenship, or

[(5) being an alien is illegally or unlawfully in the United States,

and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

[(b) EMPLOYMENT; PERSONS LIABLE; PENALTIES FOR VIOLATIONS.—Any individual who to his knowledge and while being employed by any person who—

[(1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony, or

[(2) has been discharged from the Armed Forces under dishonorable conditions, or

[(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

[(4) having been a citizen of the United States has renounced his citizenship, or

[(5) being an alien is illegally or unlawfully in the United States,

and who, in the course of such employment, receives, possesses, or transports in commerce or affecting commerce, after the date of the enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

[(c) DEFINITIONS.—As used in this title—

[(1) "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country;

[(2) "felony" means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the laws of a State and punishable by a term of imprisonment of two years or less;

[(3) "firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer; or any destructive device. Such term shall include any handgun, rifle, or shotgun;

[(4) "destructive device" means any explosive, incendiary, or poison gas bomb, grenade, mine, rocket, missile, or similar device; and includes any type of weapon which will or is designed to or may readily be converted to expel a projectile by the action of any explosive and having any barrel with a bore of one-half inch or more in diameter;

[(5) "handgun" means any pistol or revolver originally designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition, or any other firearm originally designed to be fired by the use of a single hand;

[(6) "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or single projectile for each single pull of the trigger;

[(7) "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and de-

signed or redesigned, made or remade to use the energy of the explosive in fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

[§ 1203. Exemptions

[This title shall not apply to—

[(1) any prisoner who by reason of duties connected with law enforcement has expressly been entrusted with a firearm by competent authority of the prison; and

[(2) any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm.]

* * * * * * *

ADDITIONAL VIEWS OF REPRESENTATIVE JACK BROOKS WHICH ARE JOINED BY REPRESENTATIVES MIKE SYNAR, RICK BOUCHER, HARLEY O. STAGGERS, JR., JOHN BRYANT, HAMILTON FISH, JR., CARLOS J. MOORHEAD, TOM KINDNESS, F. JAMES SENSENBRENNER, JR., BILL DANNEMEYER, AND HOWARD COBLE

The Judiciary Committee has provided the Full House a legislative vehicle which can provide a basis for meaningful reform of our nations firearms laws. We applaud this action and look forward to a full and open floor procedure that will allow us to consider all facets of the issues involved.

Many of us are supporters of a number of the concepts contained in H.R. 945, introduced by our former Judiciary Committee colleague, Mr. Volkmer of Missouri. Some of these concepts have been incorporated in H.R. 4332, others have not. These are issues which should be considered on the house floor. We intend to work with Mr. Volkmer to insure that these issues are addressed in a workable fashion.

H.R. 4332 is a good basis upon which to build, but it should not be considered the final product. When H.R. 4332 is considered we expect a number of amendments to be offered. We intend to debate these amendments fully. It is with such open debate and consideration that we will truly arrive at firearms law reform.

JACK BROOKS.
MIKE SYNAR.
RICK BOUCHER.
HARLEY O. STAGGERS, Jr.
JOHN BRYANT.
HAMILTON FISH, Jr.
CARLOS J. MOORHEAD.
TOM KINDNESS.
F. JAMES SENSENBRENNER, Jr.
BILL DANNEMEYER.
HOWARD COBLE.

APPENDIX CONTAINING COMMITTEE AMENDMENT TO H.R. 4332

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Firearms Law Reform Act of 1986".

SEC. 2. PROHIBITION ON TRANSFER AND POSSESSION OF SILENCERS.

(a) DEFINITION.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(21) The terms 'silencer' and 'muffler' mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any part or combination of parts designed or redesigned and intended for such use with a firearm.".

(b) PROHIBITION.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(n)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a silencer.

"(2) This subsection does not apply with respect to—

"(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

"(B) any lawful transfer or lawful possession of a silencer that was lawfully possessed before the date this subsection takes effect.".

(c) CONFORMING AMENDMENTS.—

(1) Section 921(a)(3) of title 18, United States Code, is amended by striking out "any firearm muffler or firearm silencer" and inserting "any muffler or silencer for a firearm" in lieu thereof.

(2) Section 5845(a)(7) of the National Firearms Act (26 U.S.C. 5845(a)(7)) is amended to read as follows:

"(7) any silencer (as defined in section 921 of title 18, United States Code);".

(3) Sections 922(a)(4) and 922(b)(4) of title 18, United States Code, are each amended by striking out "(as defined in section 5845 of the Internal Revenue Code of 1954)," and inserting "silencer," in lieu thereof.

SEC. 3. LAWFUL INTERSTATE SALE OF LONG GUNS.

Subparagraph (A) of section 922(b)(3) of title 18, United States Code, is amended to read as follows: "(A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States),".

SEC. 4. UNLAWFUL SALE, POSSESSION, OR RECEIPT OF FIREARMS OR AMMUNITION.

(a) IN GENERAL.—Section 922(g) of title 18, United States Code, is amended to read as follows:

"(g)(1) It shall be unlawful for any person—

"(A)(i) if such person is a licensee under this chapter, to sell or otherwise dispose of any firearm or ammunition to any other person, knowing or having reasonable cause to believe that such other person is unqualified; or

(ii) if such person is not such a licensee, to sell or otherwise dispose of any firearm or ammunition to any other person, knowing that such other person is unqualified;

"(B) to ship or transport any firearm or ammunition in interstate or foreign commerce, if such person is unqualified;

"(C) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, if such person is unqualified; or

"(D) to receive, possess, or transport any firearm in or affecting interstate or foreign commerce, if—

"(i) such person is unqualified (unless such person is unqualified only because such person is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year); or

"(ii) in the course of such person's employment by another person, such person knows that other person is unqualified (unless such other person is unqualified only because such person is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year).

"(3) For purposes of paragraph (1), a person is unqualifed if that person—

"(A) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

"(B) is a fugitive from justice;

"(C) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(D) has been adjudicated as a mental incompetent or committed to any mental institution;

"(E) has been discharged from the Armed Forces under dishonorable conditions;

"(F) has renounced that person's United States citizenship; or

"(G) is an alien illegally in the United States.".

(b) CONFORMING REPEAL AND AMENDMENT.—

(1) Title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. App. 1201 et seq.) is repealed.

(2) Section 923(d)(1)(B) of title 18, United States Code, is amended by striking out "and (h)".

SEC. 5. GUN SHOW SALES.

(a) IN GENERAL.—Section 922(h) of title 18, United States Code, is amended to read as follows:

"(h) In any case not otherwise prohibited by this chapter, a licensed dealer may sell or otherwise dispose of a firearm to a person who does not appear in person at the licensee's business premises if such sale or disposition takes place during and at a temporary gun show or event sponsored by any national, State, or local organization, or affiliate of any such organization devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors events devoted to the collection, competitive use, or other sporting use of firearms and the location of such sale or disposition is in the State specified in the license of such licensee. Records of receipt and disposition of firearms transactions conducted at such temporary location shall include the location of the sale or disposition and shall be entered in the permanent records of the licensee and retained on the location specified on the license of such licensee. Any inspection or examination of inventory or records under this chapter by the Secretary at such temporary location shall be limited to inventory consisting of, or records relating to, firearms held or disposed at such temporary location. Nothing in this subsection shall authorize such licensee to conduct business in or from any motorized or towed vehicle.".

(b) CONFORMING AMENDMENT.—Section 923(a) of title 18, United States Code, is amended by inserting "(other than at a temporary location described in section 922(h) of this title)" after "each place".

SEC. 6. PROHIBITION ON IMPORTATION OF PARTS OF CERTAIN FIREARMS.

Section 922(l) of title 18, United States Code, is amended by adding at the end the following: "It shall be unlawful for any person knowingly to import into the United States the barrel of any firearm if the importation of that firearm is prohibited by this section.".

SEC. 7. ADMINISTRATIVE FLEXIBILITY FOR INVOKING LICENSE-RELATED PENALTIES AND OTHER LICENSING-RELATED MATTERS.

(a) RELEVANT LICENSE INFORMATION.—Section 923(a) of title 18, United States Code, is amended by striking out "such information" and inserting "only that information necessary to determine eligibility for licensing".

(b) ADDITIONAL LICENSE APPROVAL CRITERION.—Section 923(d)(1)(B) of title 18, United States Code, is amended by striking out the semicolon at the end and insert-

ing in lieu thereof "and is not prohibited by applicable State law from engaging in conduct necessarily incident to business subject to license under this chapter;".

(c) AUTHORITY TO SUSPEND LICENSES.—

(1) Section 923(e) of title 18, United States Code, is amended by inserting "suspend or" before "revoke".

(2) Section 923(f) of title 18, United States Code, is amended—

(A) in paragraph (1)—

(i) by inserting "suspend or" before "revoked" each place it appears; and

(ii) by inserting "suspension or" before "revocation";

(B) in paragraph (2)—

(i) by striking out "revokes, a license," and inserting in lieu thereof "suspends or revokes a license";

(ii) by striking out "his denial or revocation" and inserting in lieu thereof "that action"; and

(iii) in the second sentence, by inserting "suspension or" before "revocation" each place it appears; and

(C) in paragraph (3)—

(i) in the first sentence, by striking out "his decision to deny an application or revoke a license" and inserting in lieu thereof "the action reviewed";

(ii) in the second sentence, by striking out "denial or revocation" and inserting in lieu thereof "action"; and

(iii) in the last sentence, by inserting "suspend or" before "revoke".

(d) LIMITATION ON FREQUENCY OF COMPLIANCE INSPECTIONS.—Section 923(g) of title 18, United States Code, is amended by inserting "The Secretary may inspect the inventory and records of a licensee for the purpose of ensuring compliance with the recordkeeping requirements of this chapter not more than three times during any 18-month period, unless the Secretary or the Director of the Bureau of Alcohol, Tobacco, and Firearms approves such inspection." before "The Secretary".

SEC. 8. MODIFICATION OF PENALTY PROVISIONS AND REENACTMENT OF ARMED CAREER CRIMINAL PROVISIONS.

Section 924(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" after "(a)";

(2) by striking out "Whoever violates" and inserting "Except as otherwise provided in this subsection, whoever knowingly engages in conduct that is a violation of" in lieu thereof; and

(3) by adding at the end the following:

"(2) Whoever knowingly engages in conduct that is a violation of section 922(b)(5), 922(m), or 923(h) of this title and has not been previously convicted of a violation of such section shall be fined under this title or imprisoned not more than one year, or both, rather than as provided under paragraph (1) of this subsection.

"(3) Any person who knowingly engages in conduct that is a violation of section 922(g)(1)(D) of this title and has been convicted on 3 previous occasions of robbery, burglary, or both—

"(A) shall be fined under this title and imprisoned not less than 15 years;

"(B) notwithstanding any other provision of law, shall not be granted any suspected or probationary sentence with respect to such violation; and

"(C) shall not be eligible for parole from any sentence imposed with respect to such violation.

"(4) As used in paragraph (3)—

"(A) the term 'robbery' means any felony consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily harm; and

"(B) the term 'burglary' means any felony consisting of entering or remaining surreptitiously within a building that is the property of another, with intent to engage in conduct constituting a Federal or State offense.

"(5) As used in paragraph (4), the term 'felony' means any offense punishable by imprisonment for a term exceeding one year, but does not include any offense (other than one involving a firearm or explosive) classified as a misdemeanor under the law of a State and punishable by a term of imprisonment of two years or less.".

SEC. 9. RECORDKEEPING AND REPORTING AMENDMENTS.

(a) ELIMINATION OF CERTAIN AMMUNITION RECORDKEEPING.—Section 923(g) of title 18, United States Code, is amended—

(1) by striking out "Each" and inserting "(1) Except as provided in paragraph (2), each" in lieu thereof; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary shall not require the keeping of any records under this chapter with respect to the sale of ammunition (other than armor-piercing ammunition, as such term is defined in section 929 of this title) in transactions involving less than 1,000 rounds.".

(b) CODIFICATION OF EXISTING REGULATION REQUIRING REPORTS OF MULTIPLE FIREARM SALES.—Section 923(g) of title 18, United States Code, is amended by inserting after the second sentence the following: "Each licensee shall submit such a report to the Secretary with respect to each sale or other disposition to an unlicensed person by that licensee, in 1 or more transactions during any period of 5 consecutive business days, of any combination of pistols and revolvers totaling 2 or more. Such report with respect to such sale or disposition shall be forwarded to the office specified by the Secretary not later than the close of business on the day such sale or other disposition is completed.".

SEC. 10. IMPOSITION OF ADDITIONAL PENALTIES FOR USING OR CARRYING A FIREARM OR ARMOR-PIERCING AMMUNITION IN CONNECTION WITH FELONY INVOLVING DRUG TRAFFICKING.

(a) FIREARM.—Section 924(c) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Whoever,";

(2) by striking out "violence," each place it appears and inserting in lieu thereof "violence, or drug trafficking crime,";

(3) by inserting "or drug trafficking crime" before "in which the firearm was used or carried."; and

(4) by adding at the end the following:

"(2) As used in this subsection, the rterm 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).".

(b) ARMOR-PIERCING AMMUNITION.—Section 929(a) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Whoever,";

(2) by striking out "violence" each place it appears and inserting in lieu thereof "violence or drug trafficking crime,"; and

(3) by adding at the end the following:

"(2) As used in this subsection, the term 'drug trafficking crime' means any felony violation of Federal law involving the distribution, manufacture, or importation of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).".

SEC. 11. ENHANCED PENALTY FOR MACHINEGUN USE IN CRIME AND OTHER MACHINEGUN-RELATED MATTERS.

(a) ENHANCED PENALTY.—Section 924(c) of title 18, United States Code, is amended—

(1) in the first sentence, by striking out the period at the end and inserting in lieu thereof ", and if the firearm is a machinegun, to imprisonment for 10 years."; and

(2) in the second sentence, by striking out the period at the end and inserting in lieu thereof ", and if the firearm is a machinegun, to imprisonment for 20 years."

(b) DEFINITION.—

(1) Section 921(a) of title 18, United States Code, is amended by adding after the paragraph added by section 2(a) the following:

"(22) The term 'machinegun' has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).".

(2) Section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)) is amended by inserting "part or" before "combination of parts designed and intended".

(c) CONFORMING AMENDMENT.—Section 925(d)(2) of title 18, United States Code, is amended by striking out "as defined in section 5845(b) of the Internal Revenue Code of 1954".

SEC. 12. LIMITATION ON FORFEITURE.

Section 924(d) of title 18, United States Code, is amended—

(1) by inserting "felony" before "violation" each place it appears; and

(2) by striking out "or any rule or regulation promulgated thereunder".

SEC. 13. BROADENED RELIEF FROM DISABILITIES.

Section 925(c) of title 18, United States Code, is amended—

(1) by striking out "has been convicted of a crime punishable" and all that follows through "National Firearms Act)" and inserting in lieu thereof "is prohibited by Federal law from acquiring, receiving, transferring, shipping, transporting, or possessing firearms or ammunition";

(2) by inserting "transportation," after "shipment,";

(3) by striking out "and incurred by reason of such conviction"; and

(4) by adding at the end the following: "If the Secretary determines that relief from disabilities, incurred by reason of a conviction under State law and imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms, would be consistent with the purposes of this chapter when such expungement or elimination occurs under any State law regarding the expungement of criminal convictions, the Secretary may declare that all persons obtaining relief under such State law are relieved from such disabilities.".

SEC. 14. INTERSTATE TRANSPORT OF RIFLES AND SHOTGUNS

Section 927 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "No"; and

(2) by adding at the end the following:

"(b) Notwithstanding any provision of State law or of any published ordinance to the contrary, any individual may transport any secured shotgun or secured rifle from such individual's place of origin to any destination State if—

"(1) such transport is—

"(A) incident to the change of the individual's State of residence; or

"(B) for the purpose of lawful participation in, or returning from lawful participation in—

"(i) hunting;

"(ii) a shooting match or contest; or

"(iii) any other lawful sporting activity; and

"(2) the individual may lawfully transport and possess such shotgun or rifle –

"(A) in the individual's place of origin, the destination State, and the destination political subdivision of the destination State; and

"(B) under Federal law.

"(c) For purposes of subsection (b)—

"(1) a rifle or shotgun is secured if the rifle or shotgun—

"(A) is enclosed or cased;

"(B) is not readily accessible; and

"(C) is not loaded with ammunition; and

"(2) the term 'place of origin' means—

"(A) in the case of a change of residence, the State and political subdivision thereof from which residence is changed; and

"(B) in any other case, the State and political subdivision thereof in which the possession or transport of the rifle or shotgun begins.".

SEC. 15. RECORD CHECK FOR CRIMINAL CONVICTIONS AND OTHER DISQUALIFICATIONS FOR PURCHASE OF HANDGUNS.

(a) DEFINITION.—Section 921(a) of title 18, United States Code, is amended by adding after the paragraph added by section 11(b) the following:

"(23) The term 'handgun' means a firearm which has a short stock and is designed to be held and fired by the use of a single hand.".

(b) PROHIBITION.—SECTION 922(D) OF TITLE 18, UNITED STATES CODE, IS AMENDED TO READ AS FOLLOWS:

"(d)(1) It shall be unlawful for a licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or otherwise transfer a handgun to an individual who is not licensed under section 923 unless such importer, manufacturer, or dealer promptly sends by registered or certified mail (return receipt requested), a copy of the documentation of the transaction required under this chapter, in a form prescribed by the Secretary—

"(A) to the chief law enforcement officer of the place of residence of the transferee notifying such officer of the transaction; and

"(B) to the Federal Bureau of Investigation which shall—

"(i) examine Federal official records which may reveal any circumstance making illegal the receipt or possession of a handgun by the transferee; and

"(ii) report to the chief law enforcement officer of the place of residence of the transferee if any such records show any such circumstance.

"(2) The chief law enforcement officer of the place of residence of the transferee and the Federal Bureau of Investigation shall each destroy each report received under this section from any licensee concerning any transferee, within 90 days after the date such report is received, if such report does not indicate any circumstance making illegal the receipt or possession of a handgun by the transferee.".

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